



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

El Centro Field Office  
1661 S. 4<sup>th</sup> Street  
El Centro, CA 92243  
[www.blm.gov/elcentro](http://www.blm.gov/elcentro)

Imperial Solar Energy Center South  
(EA Number: 2010-64)  
(Case File Number: CACA-51645/CACA-52359)  
Decision Record  
July 2011

## 1.0 Introduction

It is the decision of the Bureau of Land Management (BLM) to approve the issuance of two right-of-way (ROW) grants in support of the construction, operation and maintenance, and termination of ancillary facilities for the Imperial Solar Energy Center (ISEC) South solar energy generation project (ISEC South Project). These grants are in response to two ROW applications submitted by CSOLAR Development, LLC (CSOLAR); one for a proposed transmission line corridor on October 29, 2009, and one for proposed improvements to the existing dirt road to be used to access the ISEC South Project site and ancillary facilities on October 26, 2010. In connection with those applications and due to the public/private land configuration of the overall ISEC South Project, the BLM, Department of Energy (DOE), and County of Imperial prepared and have published a joint Final Environmental Impact Report/Environmental Assessment (EIR/EA) to meet the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), respectively, for the proposed project. The County of Imperial is the lead agency for CEQA purposes, and the BLM is the lead agency for NEPA purposes.

### ***Bureau of Land Management Purpose and Need for the Proposed Action***

In accordance with the Federal Land Policy and Management Act (FLPMA) (43 United States Code [USC] Section 1701 *et seq.* Section 103(c)), public lands are to be managed for multiple uses in a manner that takes into account the long term needs of future generations for renewable and non-renewable resources. The Secretary of the Interior is authorized to grant ROWs on public lands for systems of generation, transmission, and distribution of electric energy (FLPMA Section 501(a)(4)). Taking into account BLM's multiple use mandate, the purpose and need for the ISEC South Project is to respond to the FLPMA ROW applications submitted by CSOLAR Development, LLC, to construct, operate, maintain, and decommission the proposed electrical transmission interconnection line from the generating facility to the Imperial Valley Substation and associated road and other infrastructure on public lands administered by the BLM in compliance with FLPMA, BLM ROW regulations, and other applicable federal laws and policies. The Refined Project would, if approved, assist the BLM in addressing the management objectives in the following statutes, policies, and directives:

1. Executive Order 12312, dated May 18, 2001, which mandates that Federal agencies act expediently and in a manner consistent with applicable laws to increase the “...production and transmission of energy in a safe and environmentally sound manner.”
2. The Energy Policy Act 2005 (EPAAct), which sets forth the “sense of Congress” that the Secretary of the Interior should seek to have approved non-hydropower renewable energy projects on public lands with a total generation capacity of at least 10,000 megawatts (MW) by 2015.
3. Secretarial Order 3285A1, dated March 11, 2009 and amended on February 22, 2010, which “...establishes the development of renewable energy as a priority for the Department of the Interior.”

## **2.0 Description of Project**

### **2.1 BLM's Selected Alternative**

The ISEC South Project consists of three primary components: (i) an electrical generating facility located on private lands, (ii) an electrical transmission interconnection line and associated facilities located on public lands administered by the BLM, and (iii) improvements to an existing dirt road, located on a combination of public and private lands, to be used to access the ISEC South Project site and ancillary facilities access road. The electrical transmission interconnection line corridor and access road improvements located on BLM lands are the two project components which require the issuance of ROW grants by the BLM. Those project components, as presented in the Plan of Development and the EIR/EA, are described below and were analyzed in the EIR/EA as the Proposed Action. The generating facility as proposed will be located on privately owned land and is not within the scope of the ROW grants being issued by the BLM. However, as explained in the Finding of No Significant Impact (FONSI), the EIR/EA considers the environmental impacts of the entire energy generation project, including the non-Federal action components located on private lands, because the non-Federal actions are connected to the requested ROW grants for the transmission line and access road improvements, and therefore per the BLM NEPA Handbook the effects of the non-Federal action are properly considered indirect effects of the BLM action (40 CFR 1508.7. 40 C.F.R. 1508.25(c); BLM NEPA Handbook [January 2008] at pp. 46-48.)

It is the BLM's decision to approve the Refined Project as described in the FONSI. As explained in the FONSI, the Refined Project represents the option of co-locating a significant portion of the ISEC South Project's transmission line with the existing SDG&E line that the CSOLAR proposed line was originally going to parallel, including modifications to the spur road and access road necessitated by the co-location configuration (See Description of the Refined Project Below). This co-location option was identified as an alternate configuration of the Proposed Action as analyzed in the EIR/EA. CSOLAR had contacted each of the owners of the transmission lines paralleling its proposed transmission line to request an interconnect during the development of the EIR/EA, but as of the date of the Final EIR/EA had not been able to gain legal access to use any of the existing lines or towers. Since that time, CSOLAR has obtained consent from San Diego Gas and Electric (SDG&E) for shared use of those existing facilities. Based on the information provided in the EIR/EA and the FONSI, the BLM has decided to approve the Refined Project, which includes only the ROW required for the east-west connector portion of the proposed electrical transmission line. In agreement with SDG&E for the

use of the open circuit on their SDG&E-La Rosita transmission line infrastructure, SDG&E will assume ownership of the transmission line once located on its existing towers.

## **2.2 *Electrical Transmission Interconnection Line in the Refined Project***

The transmission line in the Refined Project would require a 120-foot (ft) wide ROW corridor extending from the north side of the existing Imperial Valley Substation south approximately 5 miles and then east to the generating facility site. The Refined Project will interconnect to the existing utility grid at the 230 kilovolt (kV) side of the Imperial Valley Substation via a 230 kV, overhead transmission line (ISEC South Line). The transmission line ROW corridor for the ISEC South line would also include associated access roads to accommodate the construction and long term maintenance of the transmission line and its facilities. In addition to these permanent features, temporary construction activities and pull sites would be established to facilitate the installation of the line and the crossing of the existing Southwest Powerlink 500 kV transmission line.

The transmission line in the Refined Project has three key segments:

- An East-West Connector running approximately 8,500 linear feet from the generating facility to the existing north-south utility corridor (Utility Corridor “N”), 5,420 feet of which would be across BLM land. This East-West Connector would include an additional transmission structure and an underground duct bank for the transmission line to cross under the existing Sempra and Intergen transmission lines to facilitate the interconnection to the existing SDG&E transmission line.
- Co-location of the North-South Connector (approximately 21,300 feet) onto the existing SDG&E Imperial Valley to La Rosita 230 kV transmission line from the east-west connector to the Imperial Valley Substation. The SDG&E transmission facility is located within Utility Corridor “N”. This north-south configuration would utilize space on the eastern-arm in an existing double circuit on the SDG&E towers. The line will be added using new conductors starting at Tower #26 of the SDG&E line and the existing conductor will be connected to the East-West Connector at the new dead end tower adjacent to Tower #26 described below as part of the East-West Connector. The transmission line access road will access the new dead end tower adjacent to SDG&E Tower #26, but will otherwise remain unimproved from its existing state. Installation of the additional transmission line on the existing SDG&E towers is within the scope of SDG&E’s existing ROW grants for the La Rosita gen-tie line.
- At the Imperial Valley Substation, a slightly modified Substation Connector would be used to reflect to the co-location of the north-south segment of the transmission line. The new connector would run approximately 3,000 linear ft around the Imperial Valley Substation to the 230 kV bays on the north side of the substation. For the Substation Connector, existing poles would be replaced with dual circuit poles in the existing SDG&E right-of-way to carry both of the SDG&E lines to the north side of the Imperial Valley Substation. Installation of the modified Substation Connector is within the scope of SDG&E’s existing ROW grants for the La Rosita gen-tie line.

As explained in the FONSI, the co-location configuration under the Refined Project eliminates the need for 20 new lattice tower structures that would have been required for the North-South Connector under the originally proposed transmission interconnection line.

### **2.3     *Access Road Improvements Under the Refined Project***

Under the Refined Project, an existing dirt access road would be improved for the construction and operation of the project. The existing dirt road is currently being used by the Imperial Irrigation District (IID), BLM, United States Border Patrol, farmers, and landowners south of State Route 98 (SR-98). A segment (approximately 1,258 linear ft) of that 1.1-mile long access road traverses BLM-administered lands. The improvements to the access road would include a 1,260-ft long and 40-ft wide ROW (1.2 ac) within BLM land, with easements required over private land for the remaining part of the access road. Six inches of certified weed-free Class II base will be applied to a 20-ft wide section of the road to enable all weather access, in accordance with the BLM Road Manual 9113 and IID's Water Operation Department Standards. Because fewer new towers would be required under the Refined Project, fewer spur roads from the access road to the tower locations would be necessary.

## **3.0     Decision**

Under Federal law, the BLM is responsible for approving ROW grant applications to determine whether and to what extent to authorize proposed projects such as renewable energy projects, transmission lines, and other appurtenant facilities on land it manages. Because the ISEC South Project is a privately initiated venture that would be partially sited on lands managed by the BLM, CSOLAR applied for ROW grants from the BLM pursuant to Federal law and regulations as described earlier. Based on the information in the Final EIR/EA, the FONSI, the Project record, and consultation with BLM staff, I have decided to approve the Refined Project (see description above), which includes two ROW grants covering the East-West connector from the ISEC South Project generation facility to SDG&E's La Rosita transmission line, temporary construction areas, and modifications to the access road. The total approved ROW for the Refined Project is approximately 19.2 acres, which is 66.8 acres less than originally requested in CSOLAR's ROW applications. As explained above, co-location of the ISEC South Project's interconnection line on the La Rosita transmission line is within the scope of SDG&E existing ROW grants for the La Rosita gen-tie line.

All mitigation measures identified in the Final EIR/EA are adopted by this decision. These measures can be found in sections 4.4.3, Air Quality; 4.5.3, Greenhouse Gas Emissions; 4.6.3, Geology; 4.7.4, Cultural Resources; 4.9.3, Agricultural Resources; 4.10.3, Health, Safety and Hazardous Materials; 4.11.3, Hydrology and Water Quality; 4.12.3, Biological Resources; and 4.13.3, Paleontological Resources.

## **4.0     Alternatives Considered but not Selected**

In addition to the Refined Project, the EIR/EA evaluated the originally proposed project, and two additional build alternatives: Alternative 1-Alternative Transmission Line Corridor, and Alternative 2-Reduced Solar Energy Facility Site, and Alternative 3, the No Action/No Project Alternative. Those alternatives are described briefly in the following sections.

### **Originally Proposed Project**

As discussed above, the originally proposed project included the same generating facility as the Refined Project but proposed a separate transmission line between the generating facility and the Imperial Valley Substation that paralleled the existing SDG&E line and would have required 20 more towers than the Refined Project. The Proposed Action would also have required more spur roads from the access road to the towers. The additional towers and spur roads would have resulted in more impacts to sensitive resources.

### **Alternative 1-Alternative Transmission Line Corridor**

The Alternative 1-Alternative Transmission Line Corridor would have the same generating capacity as the originally proposed project and the Refined Project, but varies from them at the southern end of the electrical transmission interconnection line corridor. Under this Alternative, the electrical transmission interconnection line would be closer to the international border with Mexico as it exits the generating facility site. Compared to the originally proposed project and the Refined Project, Alternative 1 would permanently impact 0.4 acres and temporarily impact 0.4 acres more than under the originally proposed project and the Refined Project.

### **Alternative 2-Reduced Solar Energy Facility Site**

The Alternative 2-Reduced Solar Energy Facility Site would reduce the size of the generating facility site from 946.6 to 476.0 acres, resulting in an approximate 50 percent reduction in electrical generation output compared to the originally proposed project and the Refined Project. Specifically, this alternative would reduce the direct impact from the temporary loss of agricultural lands due to the reduced acreage of the generating site. This alternative would include the same electrical transmission interconnection line corridor alignment and access road improvements as the originally proposed project and the Refined Project, and, therefore, would result in similar impacts on BLM lands. Because the project would produce 50 percent less electricity than the Refined Project, this alternative does not represent the best balance between uses of the public lands and conservation of resources, especially when considered with the Congressional, Presidential, and Departmental directives supporting renewable energy development on public lands.

### **Alternative 3-No Action/No Project Alternative**

The No Action/No Project Alternative assumes that the proposed generating facility, associated electrical transmission interconnection line, and access road would not be constructed. Under NEPA, this alternative does not require any federal approvals or action. Under this Alternative, the BLM would not approve the ROW grants for the construction and operation of the electrical transmission interconnection line and access road. This alternative does not meet the BLM's purpose and need.

## **5.0 Decision Rationale**

The modifications to the originally Proposed Action included in the Refined Project would not result in effects that are outside the range of alternatives analyzed in the EIR/EA, because the EIR/EA Project Description specifically stated that the Refined Project was one potential configuration of the Proposed Action, contingent on removal of legal obstacles associated with co-location of the transmission line with the existing SDG&E facilities. In addition, the process of hanging the electrical transmission interconnection lines north-south from the East-West Connector line to the Imperial Valley Substation was a feature of the Proposed Action that was analyzed in the EIR/EA. Under the Refined Project, such hanging will occur in approximately the same locations because the Proposed Action's transmission line route paralleled the existing SDG&E La Rosita transmission line. As result, the Refined Project would involve hanging the additional line in roughly the same location as the Proposed Action, without the need to construct 20 new towers. Thus, the Refined Project is merely reduced in scope and impact compared to the Proposed Action analyzed in the EIR/EA. Therefore, as explained in the FONSI, the Refined Project would result in impacts similar to or less than the originally proposed project for each of the resource areas discussed in the EIR/EA.

As explained in the EIR/EA, an EIS was not required for the Proposed Action, and therefore an EIS is not required to support this decision because the effects of the Refined Project are the same as or less than the Proposed Action. Furthermore, the hanging of this additional line onto the existing SDG&E transmission line infrastructure is within the scope of the existing ROW grant for La Rosita Transmission line. Based on these considerations, and as explained in the FONSI, the co-location of the north-south connector of the ISEC South Project's interconnection line onto the SDG&E line has been adequately analyzed pursuant to NEPA and requires no further analysis. Furthermore, by eliminating the need for 20 new towers, the Refined Project would further reduce the already insignificant and/or mitigated impacts of the originally proposed project, especially those impacts related to visual resources, cultural resources, and biological resources. The Refined Project would avoid direct impacts to a previously recorded cultural resource that would have been impacted by the original project, and would indirectly impact only two culturally sensitive areas, rather than the nine that would have been indirectly impacted by the original project. Similarly, fewer poles would reduce ground disturbance, thus limiting impacts to Flat-tailed horned lizard (FTHL) habitat. Further clarifications to and confirmation of the reduced impacts from the Refined Project relative to the transmission line originally proposed by CSOLAR were disclosed in an Errata to the County of Imperial's Staff Report for the ISEC South Project.

## **6.0 Consultation and Coordination**

### ***6.1 United States Fish and Wildlife Service***

A Biological Assessment (BA) for the FTHL was prepared on October 25, 2010. The BLM submitted this BA to the United States Fish and Wildlife Service (USFWS) on December 15, 2010. The BA also identified five other federally listed species that are known to occur in the Imperial Valley but not likely to occur within the action area, including the federally threatened Peirson's milk-vetch, and the federally endangered Yuma clapper-rail, southwestern willow flycatcher, least Bell's vireo, and Peninsular bighorn sheep. An amendment to the BA prepared on February 14, 2011, that includes the

mountain plover, was submitted to the USFWS on February 15, 2011. In response, the USFWS issued a concurrence letter dated April 1, 2011 stating that the project “is not likely to adversely affect” the southwestern willow flycatcher. The USFWS also notified the BLM that Section 7 consultations for the FTHL and mountain plover were no longer required for this project on April 1, 2011 and June 9, 2011, respectively.

## **6.2 *Native American Consultation/Coordination and Section 106 Consultation/Coordination***

The BLM initiated tribal consultation for the project by letter on June 24, 2010, to identify properties of religious and cultural significance to the Tribes. The following Tribes or tribal organizations were invited to be consulting parties:

- Barona Band of Mission Indians
- Campo Kumeyaay Nation
- Cocopah Indian Tribe
- Ewiiapaayp Band of Kumeyaay Indians
- Fort Yuma Indian Reservation
- Jamul Indian Village
- Kwaaymii Laguna Band of Indians
- La Posta Band of Kumeyaay Indians
- Manzanita Band of Kumeyaay Indians
- Mesa Grande Band of Mission Indians
- San Pasqual Band of Diegueno Indians
- Santa Ysabel Band of Diegueno Indians
- Sycuan Band of Kumeyaay Nation
- Torres-Martinez Desert Cahuilla Indians
- Viejas Band of Kumeyaay Indians

The BLM received responses from the Fort Yuma Quechan Tribe and the Cocopah Indian Tribe indicating their interest in the project and their desire to continue consultation. The BLM El Centro Field Office Archaeologist also received a phone call and discussed the project with Ms. Carmen Lucas of the Kwaaymii Laguna Band of Mission Indians. Ms. Lucas requested additional information regarding the project and continued consultation. The BLM continued to provide updates on the status of the environmental review process and the Section 106 process, to invite the Tribes into government-to-government consultations, and to request their help in identifying any issues or concerns.

The cultural resource inventory report was sent to all Tribes listed above for their review and comment on November 1, 2010. The letter including the reports, invited the Tribes to a meeting and archaeological sites visit held in El Centro on November 16, 2010. The meeting presented information to the Tribes regarding the proposed project and provided an opportunity for Tribes to ask questions and express their concerns regarding the project. At the meeting, the Tribes requested additional information regarding some of the cultural sites. The Tribes were supportive of the project’s proposed

generating facility site location on existing disturbed agriculture land rather than undisturbed desert. The Tribes' main concerns were about direct impacts to cultural sites and overall impacts to undisturbed desert lands. The Tribes requested that the project avoid impacts to cultural resource sites to the maximum extent possible and co-locate with existing facilities to reduce environmental impacts to undisturbed desert. Subsequent to the meeting, additional information was provided to the Tribes and the transmission line design was modified to co-locate that line with the SDG&E transmission facilities, as included in the Refined Project, to reduce direct impacts to cultural sites.

There have been two additional letters and a meeting since November 16, 2010. A letter dated December 14, 2010, informed the Tribes of the release of the Draft EA/EIR, the comment period, and where they could submit comments. A letter dated January 31, 2011, informed the Tribes that the BLM was proposing to develop a MOA to resolve adverse effects to historic properties, and invited the Tribes to a consulting party meeting. The consulting party meeting was held in El Centro on February 23, 2011, and further discussed the development of an MOA. Representatives from the Cocopah Indian Tribe, Manzanita Band of Kumeyaay Indians, and the Fort Yuma Quechan Tribe attended the meeting.

In parallel with the tribal consultation process, the BLM also initiated formal consultation with the State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP). This consultation included the Tribes identified above and led to the development of the MOA. Pursuant to Section 106 of NHPA, determinations of significant impacts and/or mitigation measures cannot be made without consultation, and the Decision Record must include either an executed MOA or a Programmatic Agreement (PA) if there are any significant impacts. The MOA was signed by BLM on July 8, 2011, and is provided as Attachment C to this Decision. As memorialized in the MOA, the implementing regulations for the NHPA (36 CFR 800) outline the process to be undertaken for the identification, evaluation, effect determinations, and development of treatments for properties that might be affected by an undertaking. This process is undertaken in consultation among the BLM, SHPO, ACHP, federally recognized Tribes, and interested parties. As explained in the EIR/EA, FONSI and MOA, the Refined Project was developed with conditions or design features intended to purposely avoid, minimize or mitigate impacts to cultural resources sites from rising to an adverse level.

## **7.0 Public Involvement**

The following scoping and public involvement process was used by the BLM and the County of Imperial for the preparation of the EIR/EA for the ISEC South Project.

### **7.1 Scoping**

The County of Imperial issued a Notice of Preparation (NOP) for the preparation of an EIR/EA for the project on June 11, 2010. The NOP was distributed to city, county, State and Federal agencies, other public agencies, and various interested private organizations and individuals. The NOP was also published in the Holtville Tribune on June 11, 2010. The purpose of the NOP was to identify public agency and public concerns regarding the potential impacts of the project, and the scope and content of environmental issues to be addressed in the EIR/EA. Comment letters in response to the NOP were received from the California Department of Conservation, California Department of Transportation,



Imperial County Air Pollution Control District, Yuma Marine Corps Air Station, Imperial Irrigation District, and the Colorado River Board of California. The circulation of the NOP ended on July 16, 2010. Written comments received during the public review period for the NOP are included in Appendix A of the Final EIR/EA.

A public scoping meeting was held for the Project to solicit input on the scope and content of the EIR/EA. This meeting involved both representatives of the County of Imperial as the CEQA Lead Agency, and the BLM as the NEPA Lead Agency.

### **7.2 *Draft EIR/EA Public Comment Period***

In consideration of the information generated during the scoping process, the County of Imperial and BLM prepared a joint Draft EIR/EA for the project. The Draft EIR/EA was submitted to the Governor's Office of Planning and Research (OPR), State Clearinghouse, and circulated for a 50-day public review period from December 3, 2010 to January 25, 2011. Twelve agencies, organizations, and persons provided written comments on the Draft EIR/EA during that public review period. A copy of each comment letter along with corresponding responses is included in a "side-by-side" format in the Response to Comments which is provided as an Appendix to the Final EIR/EA.

### **7.3 *Final EIR/EA Public Comment Period***

The Final EIR/EA, including the responses to comments, was circulated for public review from April 26, 2011 to May 26, 2011. Two comment letters were received. Those comment letters and corresponding responses are provided in Attachment B of this Decision Record.

## **8.0 Plan Consistency**

The Refined Project and the BLM actions proposed for the Refined Project have been reviewed and found to be in conformance with the following BLM Land Use Plans:

### **California Desert Conservation Area (CDCA) Plan of 1980, as amended**

The proposed transmission line corridor and the proposed access road for the Refined Project are entirely within the CDCA-designated Utility Corridor "N." This area is designated as Multiple-Use Class L-Limited Use. As shown in Table 1 in the CDCA Plan, Multiple-Use Class Guidelines, within the Limited Use area, "New gas, electric, and water transmission facilities and cables for interstate communication may be allowed only within designated corridors" (see Energy Production and Utility Corridors Element). Furthermore, regarding motorized-vehicle access/transportation, Table 1 in the CDCA Plan indicates, "New roads and ways may be developed under right-of-way grants or pursuant to regulations or approved plans of operation." Because the proposed electrical transmission interconnection line and the segment of the access road within BLM lands would be considered an allowed use because they would be within a designated utility corridor (Utility Corridor "N"), the construction and operation of the proposed transmission line and access road improvement components of the Refined Project are consistent with the CDCA Plan.

## **Yuha Basin Area of Critical Environmental Concern (ACEC) and Flat-tailed Horned Lizard (FTHL) Rangewide Management Strategy (RMS)**

In addition to being within Utility Corridor “N”, the proposed transmission line corridor is entirely within the Yuha Basin ACEC of the CDCA Plan. The Yuha Basin ACEC Management Plan allows for the “...traversing of the ACEC by proposed transmission lines and associated facilities if environmental analysis demonstrates that it is environmentally sound to do so.”

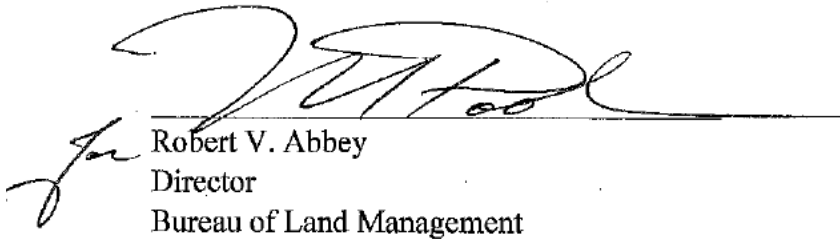
The proposed transmission line corridor is also within the Yuha Basin Management Area (MA) for the FTHL. The FTHL RMS discourages surface-disturbing projects within the FTHL MAs; however, the RMS allows cumulative disturbance of up to 1 percent of the total land area in the MAs. For projects proposed within an MA, the RMS encourages siting in previously disturbed areas or in an area where habitat quality is poor. Surface-disturbing activities should be minimized through planning and implementation of appropriate conservation measures and specific measures developed to avoid and minimize direct and indirect impacts to FTHL must be implemented. With the implementation of the Refined Project, cumulative surface disturbances within the Yuha Desert MA would be approximately 2.7 acres for the Refined Project, and with the Refined Project aggregate cumulative disturbances would be still be much less than 1 percent (See EIR/EA section titled “Flat-Tailed Horned Lizard, pages 4.12-78 to 4.12-80). Also, as discussed in EIR/EA Section 4.12 Biological Resources, the surface disturbing activities associated with the Refined Project, which are similar to or less than the originally proposed project, are subject to mitigation measures and design feature intended to minimize direct or indirect impacts to FTHL. Thus, the design of the Refined Project is consistent with the Yuha Desert Basin ACEC Management Plan and FTHL RMS.

Based on information in the EA, the FONSI, the Project record, and recommendations from BLM specialists, I conclude that this decision is consistent with the CDCA Plan, Yuha Basin ACEC Management Plan, FTHL RMS, Federal Endangered Species Act, Native American Religious Freedom Act, other cultural resource management laws and regulations, Executive Order 12898 regarding Environmental Justice, and Executive Order 13212 regarding potential adverse impacts of energy development, production, supply and/or distribution.

## 9.0 Final Agency Action

### 9.1 Right-of-Way Authorization

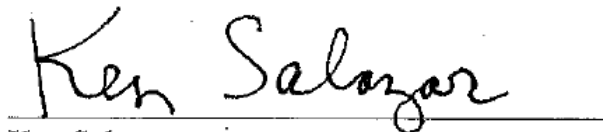
Based on the foregoing, it is my decision to approve the ROW grants to CSOLAR, subject to the terms, conditions, stipulations, Plan of Development, and environmental mitigation measures developed by the Department of the Interior and reflected in this Decision Record. This decision is effective on the date this Decision Record is signed.

  
for Robert V. Abbey  
Director  
Bureau of Land Management

7/14/2011  
Date

### 9.2 Secretarial Approval

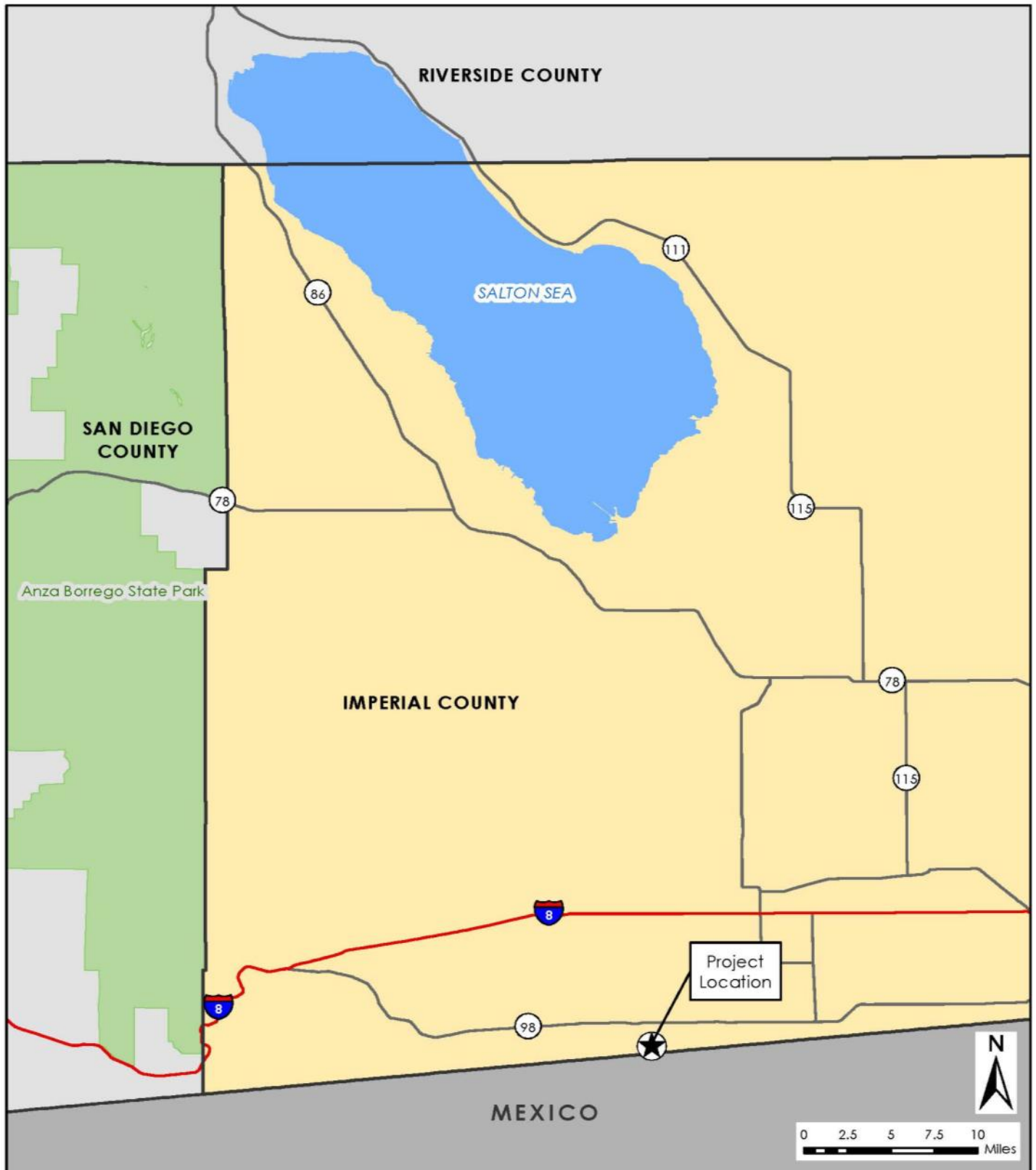
I hereby approve this decision. My approval of this decision constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4. Any challenge to this decision, including the BLM Authorized Officer's issuance of the ROW as approved by this decision, must be brought in Federal district court.

  
Ken Salazar  
Secretary  
Department of the Interior

JUL 14 2011  
Date

#### Attachments:

- A. Figures 1, 2, and 3
- B. Response to Comments received on Final EIR/EA
- C. Executed Memorandum of Agreement



SOURCE: ESRI, 2010; BRG Consulting, Inc., 2011

6/15/11

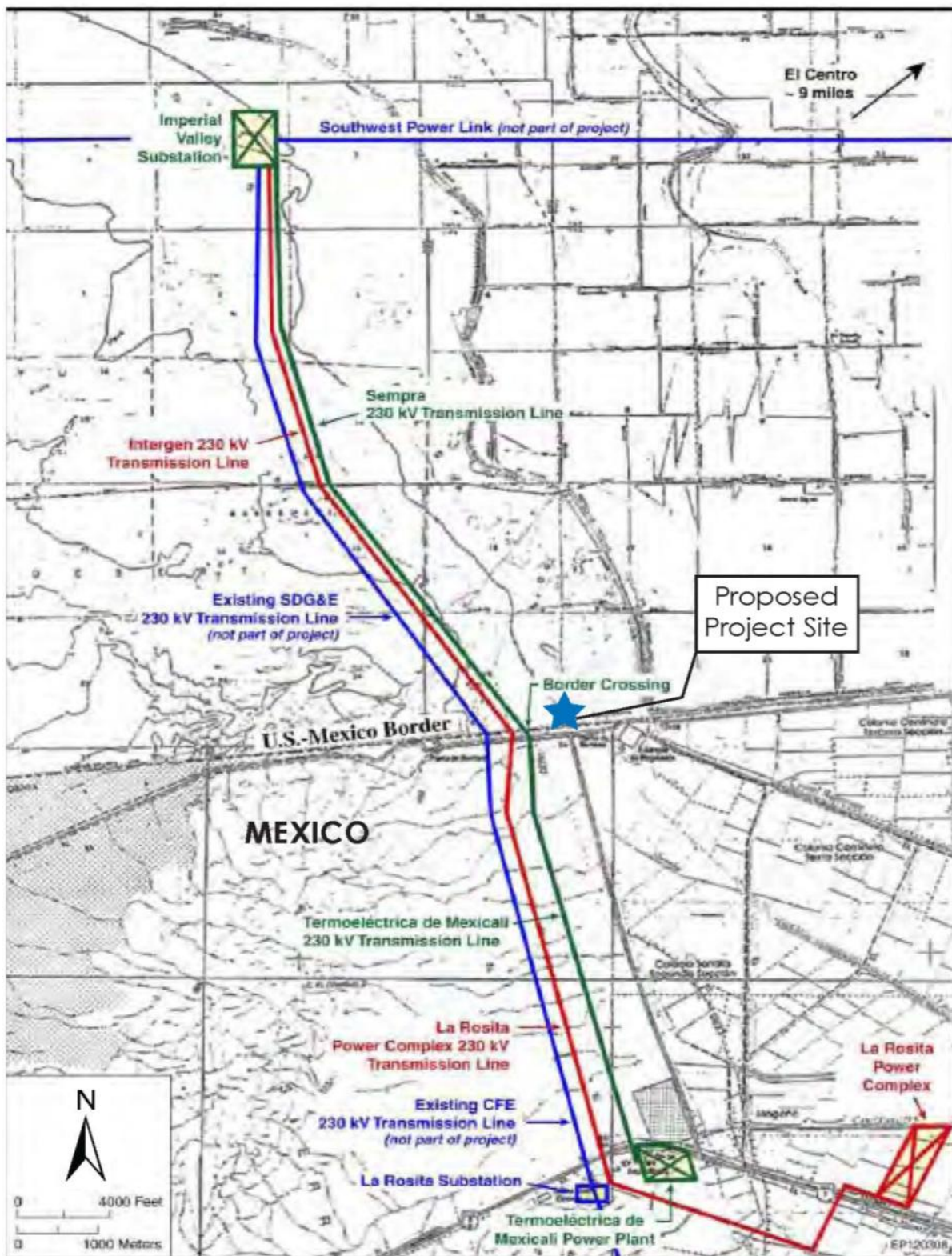


Imperial Solar Energy Center South

Regional Location

FIGURE

1



SOURCE: Sempra Intergen EIS, 2010

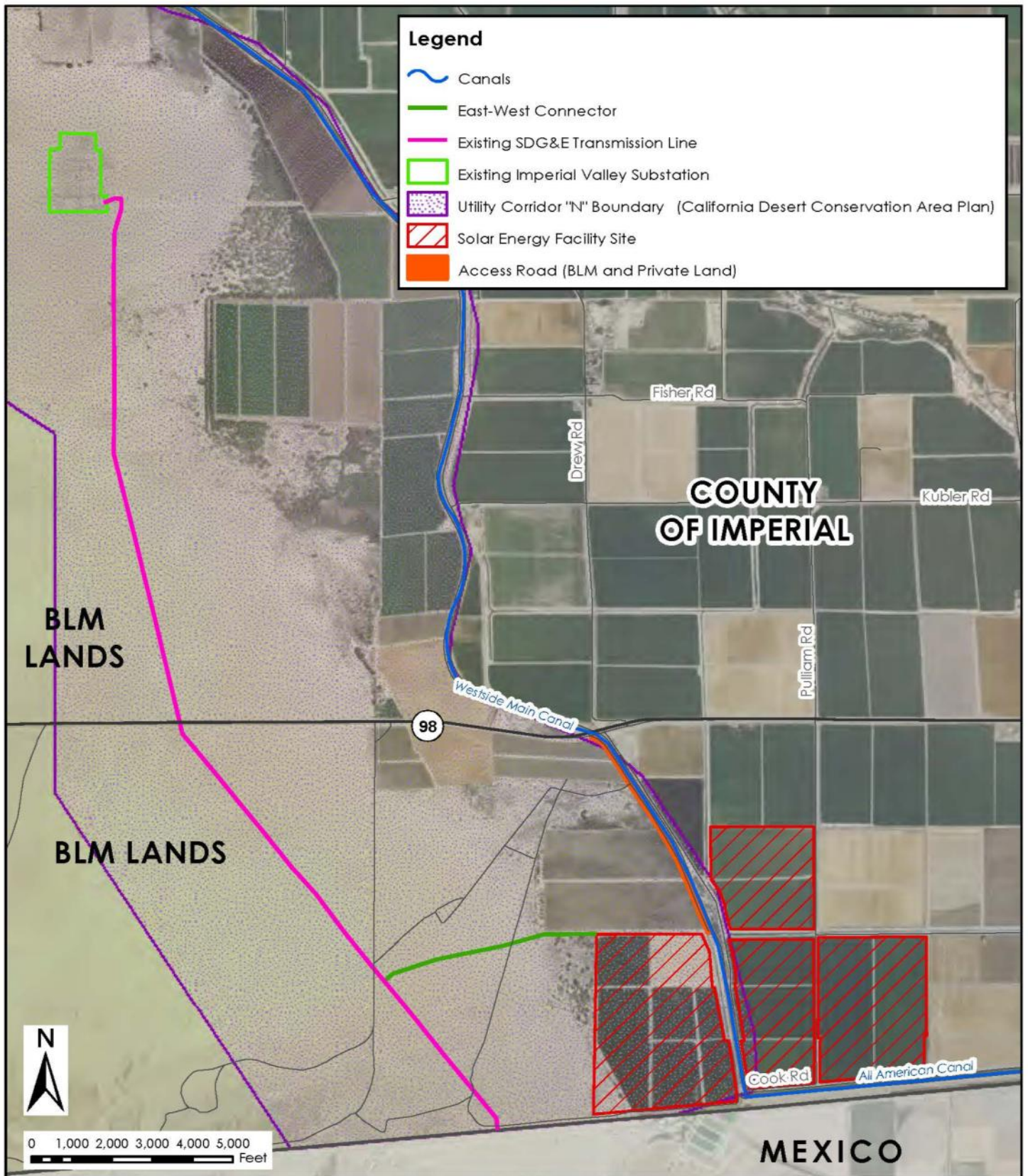
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Imperial Solar Energy Center South  
Existing Transmission  
Lines in Utility Corridor "N"

FIGURE  
2





SOURCE: RECON, 2010; ESRI, 2010; BRG Consulting, Inc., 2011

6/15/11



Imperial Solar Energy Center South

Components of the Refined Project

FIGURE

3



## Manzanita Band of the Kumeyaay Nation

May 25, 2011

Jennifer Whyte, BLM Project Manager  
Margaret Goodro, BLM Field Manager  
Bureau of Land Management  
El Centro Field Office  
1661 S. 4th Street  
El Centro CA 92243

Re: Imperial Solar Energy Center – South Proposed Project  
CASE FILE NUMBER: CACA51645  
DOCUMENT NUMBER: CA-670-2010-064

Ms. Whyte and Ms. Goodro,

As the Chairman of the Manzanita Band of the Kumeyaay Nation (Manzanita) we are formally submitting our written comments to the Bureau of Land Management (BLM) prior to the close of the public comment period so that these will be given due consideration regarding any decision on the proposed project entitled Imperial Solar Energy Center-South and the Final Environmental Impact Report / Environmental Assessment (EIR/EA-document number CA-670-2010-064).

It is well established that the land where this proposed project is located is part of the historic and ancestral homelands for the Kumeyaay Nation. For generations dating back thousands of years our people have lived in the region and specifically inhabited this location as it served us as a primary habitat along the shoreline of ancient Lake Cahuilla. As the native stewards of the land we take exception to your document's conclusion that this proposed project has "no significant impacts" since the proposed project does in fact negatively impact Native American sacred and cultural sites.

The proposed project transmission lines pass over identified cremation sites and documented human remains. Furthermore, proposed project transmission poles are suggested to be constructed in the midst of a recognized Kumeyaay cultural site that has been determined as

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## RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011

### Response to Comment 1:

The comment period ended May 26, 2011. This letter was received June 3, 2011.

### Response to Comment 2:

Comment noted. The BLM and County have given the following opportunities for public and tribal involvement:

1. Airport Land Use Committee Public Hearing 6/16/10
2. Public Scoping Hearing/Environmental Evaluation Hearing 6/24/10
3. Tribal Consultation Meeting 11/16/10
4. Kumeyaay Nation's Cultural Resource Committee Hearing 12/2/10
5. Draft Environment Impact Report/Environmental Assessment (50 day public comment from December 3, 2010 through January 25, 2011)
6. Shovel Testing of IMP 3999 (February 14-16, 2011)
7. Tribal Consultation Meeting 2/23/11
8. MOA for Tribal Comments March 2011
9. MOA for Tribal Comments May 2011
10. Planning Commission Public Hearing May 11, 2011
11. Planning Commission Public Hearing May 25, 2011
12. Environmental Assessment (Available from April 25, 2011 to May 26 2011)
13. Board of Supervisors Hearing June 7, 2011

As part of the tribal consultation process as required by Section 106 of the National Historic Preservation Act, the BLM invited all of potentially affected tribes the opportunity for a site visit on 11/16/10. As a result of that visit, the BLM attended the Kumeyaay Nation's Cultural Resource Committee Hearing to present the potential project impacts.

**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011** (continued)

**Response to Comment 2:** (cont'd.)

Additionally, the Manzanita Band of Kumeyaay were given the opportunity to comment on the project during the 50 days the Draft Environmental Impact Report/Environmental Assessment was available to the public.

The BLM has subsequently met with and discussed the project with the Tribe on several occasions and this is the first time the Manzanita Band of the Kumeyaay Nation has stated that in their opinion a portion of this project would have a potentially significant impact on cultural resources.

The reason the Final EIR/EA describes that there are no significant impacts is because the project design features identified in CR 1-CR-4 prevent the potentially significant impact from rising to the level of significance. Project design features are part of the baseline for environmental impact analysis and therefore serve a valuable role in preventing impacts from rising to the level of significance.

**Response to Comment 3:**

A Memorandum of Agreement (MOA) has been created in order to prevent potential cultural resource impacts to the National Register eligible cultural site from rising to the level of significance. The MOA was executed on July 8, 2011.

The existing main transmission line access road crosses the 40' contour and a new road is not being proposed. New road construction would be limited to extending existing spur roads. All proposed new access roads, with the exception of 2 small new spur roads in IMP-3999, avoid cultural resources with a minimum buffer of 10 meters (33 feet). The only site along the 40' contour that will be impacted is IMP-3999. No other sites were identified along the contour.



**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011** (continued)

**Response to Comment 3:** (cont'd.)

The applicant's proposed transmission line is at least several hundred feet away from one cremation site which exceeds the buffer requested in this comment letter. Use of the Proposed Action route also keeps the transmission interconnection line significantly further away from another cremation site than it otherwise would be if the Alternative 1 route were chosen along the US-Mexico border.

The structures that are proposed to be constructed within IMP-3999 have been relocated based on comments from various tribes and the SHPO in an effort to eliminate impacts to artifacts within the affected site. Additionally, an MOA has been created and circulated to affected tribes for comments on two occasions. This MOA outlines applicant proposed measures and steps that will be taken to avoid, minimize, and prevent cultural resource impacts to IMP-3999 from rising to the level of significance.

The Proposed Action was refined to avoid all but one site (IMP-3999). The towers and roads that impact IMP-3999 were relocated within the site to avoid known artifacts based on surveys and meetings between the BLM and interested Tribal Representatives. Transmission towers were selected instead of monopoles for their ability to span larger distances and thus reduce impacts to IMP-3999. The current mapped dimensions of the site are approximately 900 meters northwest-southeast by a maximum of 150 meters northeast-southwest making it impossible to span the entire site while still maintaining alignment with the existing towers within Utility Corridor "N." Towers were placed at the edges of the site to reduce impacts within the site. Towers were also placed in parallel with 3 existing sets of towers in order to utilize existing roads and create the shortest spur roads and the least new surface disturbance. The Proposed Action's temporary surface disturbance represents a less than 4% impact to the site while its permanent disturbance represents a less than 0.3% surface disturbance.

**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011** (continued)

**Response to Comment 3:** (cont'd.)

Pursuant to applicant proposed Mitigation Measure CR1, a formal testing and evaluation program is required prior to construction. A Data Recovery Plan has been prepared and circulated to interested parties, including tribal governments, to ensure adequate recovery of information and protection of artifacts prior to construction. The key features of the Data Recovery Plan which is designed to avoid and minimize impacts to the historic property are the following:

- Mapping and Surface Recording
- Surface Collection
- Remote Sensing – Magnetometry
- Shovel Test Excavations
- Standard Unit Excavations
- Trenching -- A backhoe trench will be excavated at each of the four temporary tower sites
- Halt construction immediately within 30 m of the location of any discovery
- Standard Processing and Cataloging
- Special Studies
- Radiocarbon Dating
- Thermoluminescence Dating
- Obsidian Hydration Analysis
- X-ray Fluorescence Analyses
- Protein Residue Analysis
- Fire-Affected Rock Experiments

The existing roads that go through IMP-3999 are maintained by San Diego Gas and Electric (SDG&E), Sempra, Intergen, and the Border Patrol. The existing road crosses the 40' contour. The proposed project's impacts result in additional disturbance of a couple hundred feet of new roads, that are temporary extensions subject to restoration. No cut or fill grading is required for these new roads. Furthermore, the new roads are mitigated through implementation of the measures outlined in the MOA.

**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE  
KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN,  
DATED MAY 25, 2011** *(continued)*

**Response to Comment 3:** *(cont'd.)*

The applicant proposed measures mentioned above ensure that new spur roads will not significantly impact artifacts or cultural resource sites.

eligible for the National Register. Many of the proposed project access roads are to be constructed along the forty-foot geographical contour line that served as the shoreline of Lake Cahuilla. The forty-foot contour line is the heart of the cultural sites in the area since our people lived and worked along this shoreline for thousands of years.

Moreover, the proposed access roads will not only destroy the sites along the shoreline through road construction but also negatively impact other adjacent sites in the archaeological district by providing increased access for on going disturbances. The Manzanita government and people as a sovereign nation feel strongly that these are significant negative impacts that are minimized or ignored in the proposed project EIR/EA document.

The Manzanita Government is in concept supportive of renewable energy. We are not against any project that is respectful of our culture and sacred sites. As such, Manzanita formally requests that the BLM either summarily reject this proposed project based on the negative impacts it has on Kumeyaay sacred burial and numerous cultural sites or alternatively Manzanita strongly request that the BLM restrict the project approval in the following manner:

- 1) Reject the proposed route of the transmission lines as described in Alternative A and if the appropriate studies have been done and there are no impacts to sacred or cultural sites, consider, and after further consultation, select the transmission route suggested along the US/Mexico border as described in Alternative 1 [see Figure 2-5]. Manzanita believes the existing roads and disturbed area along the border would provide the best route to facilitate this project without impacting currently undisturbed and high value cultural, archaeological, historic, and sacred sites. Further study of this border area may be required and Manzanita reserves the rights to comment further once adequate studies are available.
- 2) Require that the Imperial Solar Center South project utilize the existing transmission towers for connection to the Imperial substation since there is sufficient capacity in place on those towers as they currently stand. There are already three fully functional transmission lines with capacity to accommodate Imperial Solar Center South on existing poles along this route with existing service and construction roads. To add a forth row of power poles and lines along with the construction of new access roads is summarily unnecessary, unwarranted, and negligently disregards a mandate for maximizing existing infrastructures.
- 3) Deny the construction of any new access roads since there are serviceable roads in place currently for the maintenance of the three transmission lines already running from the US/Mexico border to the Imperial substation.
- 4) Manzanita respectfully request that a one-hundred and fifty (150) foot buffer zone be established on each side of the entire forty (40) foot geographical contour line which served as the shoreline of Lake Cahuilla so that no new construction or access roads further impact this sensitive cultural and archaeological zone.

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(cont'd.)

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## RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011 (continued)

### Response to Comment 4:

The Final EIR/EA document does not contain an Alternative A. It contemplates the Proposed Action with its Revised Proposed Action and Alternatives 1-3. For the purposes of this response, we will assume the commenter is referring to the Proposed Action. The Southern East-West Connector (IVS-5) was fully studied along with the more northerly alternative (IVS-3).

Following the transmission corridor along the border road alternative and then parallel to the existing transmission lines would cause an increase in impacts instead of a reduction in impacts. This route would not only impact IMP-3999 which is also impacted by the Proposed Action, but would also impact the cremation site (IMP-4485/4495) and 5726-S-2 (FEIR/EA at p. 4.7.7). Rather than spanning the site with an overhead transmission line, a tower and spur road would be impacting the cremation site which would result in a greater impact than the alternative avoided by implementation of the Proposed Action. Additionally, it would cause conflicts with Border Patrol activities, US Army Corps of Engineers Jurisdictional Waters during construction as well as cause impacts to sites IMP 4494 and IMP 4485 (FEIR/EA at p. 2-55).

Based on the studies conducted and the mitigation measures developed, no impacts to cultural sites are expected along the E-W portion of the Proposed Action. The project will make use of an existing East-West road which will further reduce impacts by limiting the amount of new surface disturbance.

### Response to Comment 5:

Co-Location of towers and poles is preferred. The BLM has created Utility Corridor N to encourage applicants to minimize their impacts to the cultural and biological resources in the Yuha Desert through co-location. In fact, the applicant surveyed the existing corridor with the intent of utilizing existing roads and existing towers to the greatest extent possible.

**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011** (continued)

**Response to Comment 5:** (cont'd.)

As explained in the EIR/EA, an option of co-locating the project transmission line with the existing SDG&E line was evaluated. At that time, CSOLAR had contacted each of the owners of the transmission lines paralleling its proposed transmission line to request an interconnect, but as of the date of the Final EIR/EA had not been able to gain legal access to use any of the existing lines or towers. Since that time, CSOLAR has obtained consent from SDG&E for shared use of those existing facilities. This shared transmission line configuration with modified spur roads from the access road, and the generating facility, is referred to as the Refined Project. The BLM has approved the grant of ROW for the Refined Project. Only the East-West connector of the Proposed Action's transmission line is approved, thereby eliminating the construction of the four-mile transmission line that would have connected the transmission line to the IV Substation. In addition, the BLM has approved the access road as described in the Final EIR/EA under the Proposed Action.

**Response to Comment 6:**

The project plans to utilize the existing access road adjacent to the three transmission lines referred to in the comment. The applicant carefully selected its route to enable it to utilize existing roads as much as possible-- a design that minimizes new disturbance. The route entails driving on existing roads and existing spur roads, and then creating minor roads averaging 120' in length to get from the existing roads to the proposed tower locations.

**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011** (continued)

**Response to Comment 6:** (cont'd.)

A certain amount of new roads are required to enable the applicant to build the required interconnection facilities. The new spur road extensions, with the exception of 2 in IMP-3999, have been routed to avoid impacts to cultural resource sites. For the E-W connector portion of the gentie line which connects the project with the corridor of three transmission lines through IVS-3 was located in the location outlined in the Proposed Action so that the existing road could be used and a new service road would not need to be constructed.

**Response to Comment 7:**

While the 40 foot contour and 300 foot buffer zone reflects the location where archeological sites and sites of cultural significance to tribes may be found, creation of an artificial buffer zone based on an arbitrary contour line that may or may not have any relationship to protecting significant cultural and archeological values, is not a condition that would or should be imposed by the BLM.

The BLM's environmental analysis process is designed to discover any sensitive resources present and eliminate or reduce impacts to those sensitive resources. In fact, the cultural surveys as part of the Section 106 process have identified significant archeological sites that the tribes have identified as being culturally significant. The BLM, in collaboration with the tribes, the State Historic Preservation Office, and interested stakeholders has relocated project elements in order to dramatically reduce impacts to these archeological sites. Design changes used to avoid impacts include: changing the length of spans between transmission towers, shifting the alignment of transmission towers, realigning construction access roads. Additionally, the BLM in consultation with the tribes, has developed a Memorandum of Agreement to create applicant proposed measures to further reduce impacts and prevent them from rising to the level of significance. The MOA will be executed prior to the close of BLM's Decision Record. The MOA was executed on July 8, 2011.

**RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN, DATED MAY 25, 2011** (continued)

**Response to Comment 7:** (cont'd.)

In the case of this project, avoiding impacts to as many archeological and historic sites as possible and co-locating structures with existing structures are major project design features that minimize and mitigate impacts.

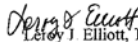
However, the gentle line must be able to cross the 40' contour in order to implement the Refined Proposed Project that would co-locate its tower structures. Currently, the main transmission interconnection line access road crosses the 40' contour and is part of the existing environmental baseline. Therefore, no significant additional disturbance would be required in order to utilize this road.

RESPONSE TO COMMENT LETTER FROM MANZANITA BAND OF THE  
KUMEYAAY NATION, SIGNED BY LEROY J. ELLIOTT, TRIBAL CHAIRMAN,  
DATED MAY 25, 2011 (continued)

By approving the Imperial Solar Center South under these reasonable conditions it will still provide a viable renewable energy project, minimize the potential disturbance of the Kumeyaay cultural sites, avoid desecrating the Native American sacred cremation and burial sites, provide no further detracting of the view shed by allowing a fourth high voltage tower line in the area known as Utility Corridor N, and in fact reduce the overall cost of construction for the applicant.

We appreciate the BLM respecting our culture, religion, and heritage as it considers the appropriate action on this and all the other projects under review. As always the Manzanita Executive Council is open and available for further discussions.

Respectfully,

  
Leroy J. Elliott, Tribal Chairman  
Manzanita Band of the Kumeyaay Nation

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Response to Comment 8:  
Comment noted.



**BACKCOUNTRY AGAINST DUMPS**  
P. O. BOX 1275, BOULEVARD, CA 91905  
619-766-4170 ph 619-766-4922 fax

Jennifer Whyte  
BLM El Centro Field Office  
via: [Jennifer\\_Whyte@ca.blm.gov](mailto:Jennifer_Whyte@ca.blm.gov)

May 26, 2011

AND

Patricia Valenzuela  
Planner III County of Imperial  
Planning and Development Services Department  
801 Main Street  
El Centro, CA 92243

via: US Mail and [patriciavalenzuela@imperialcounty.net](mailto:patriciavalenzuela@imperialcounty.net)

**Imperial Solar Energy Center - South (ISECS) FINAL EIR/EA COMMENTS:**  
SCH #2010061038, Conditional Use Permit: CUP# 10-0011; Variance : # V10-006 BLM ROW:  
CACA51645/CACA-52359; EA# 2010-64-2011-00

**RECIRCULATION / SUPPLEMENTATION OF FEIR/EA DOCUMENT IS REQUIRED**

Dear Ms. Whyte and Ms. Valenzuela,

These comments are submitted on behalf of the following groups: Backcountry Against Dumps (BAD) a public benefit non-profit working to protect rural resources and communities; The Protect Our Communities Foundation (POC) a 501 c 3 whose mission is to protect rural communities and natural resources in southern California and northern Baja California from unnecessary and harmful industrial energy projects and to advance smart energy solutions; and the East County Community Action Coalition (ECCAC) whose mission is to promote the quality of life for residents of East County of San Diego by promoting coordinated community action. Members of our groups include property owners and residents in both Imperial and San Diego Counties. These comments are also submitted on behalf of Donna Tisdale, as an individual, who is an Imperial Valley native, and an owner of Brawley farmland, who pays Imperial County property taxes and IID Water Availability Charges.

**Connected Action was ignored in FEIR/EIS: Without the Sunrise Powerlink, ISECS would not have access to the California grid.**

ISECS relies on the highly controversial and litigated 500kV Sunrise Powerlink that still has unresolved federal suits challenging the BLM and Forest Service approvals and a state suit challenging the State Water Resources Control Board permit approvals. The Sunrise Powerlink,

5-26-11: ISEC South FEIR/EA comments from BAD/POC/ECCAC/Tisdale

Page 1

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011**

**Response to Comment 1:**

Comment noted.

**Response to Comment 2:**

The Final EIR/EA identified that if the Sunrise Powerlink were constructed, then it would carry electricity generated by the proposed project to the San Diego market. Please refer to Response to Comment L-26 (see Final EIR/EA Responses to Comments).

However, this does not mean the Proposed Action cannot be completed and provide its benefits to customers "but for" the Sunrise Powerlink's construction. If the Sunrise Powerlink is not constructed, there are four places the power generated by the Proposed Action could go after it reaches the Imperial Valley Substation:

- (1) Southwest Powerlink to San Diego
- (2) Southwest Powerlink to Phoenix area
- (3) Into the IID system along IID's J Line
- (4) To Mexico along the La Rosita line

Therefore, the comment that the "Connected Action was ignored in FEIR/EIS: Without the Sunrise Powerlink, ISECS would not have access to the California grid" is not correct.

In other words, the Sunrise Powerlink and the Proposed Action are separate projects because they have "independent utility." The impacts from one project cannot automatically be imputed to the other project and the Proposed Action's project description does not need to include the Sunrise Powerlink in order to satisfy CEQA's requirement for project descriptions to reflect the "whole of the action." Courts have relied upon the "independent utility" and "but for" test to resolve similar piecemealing claims in CEQA and NEPA lawsuits. *Del Mar Terrace Conservancy, Inc. v City Council* (1992) 10 Cal App 4th 712; *Daly v. Volpe* (3d Cir. 1975) 514 F.2d 1106, 1109-1110.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** *(continued)*

**Response to Comment 2:** *(cont'd.)*

The U.S. Fish and Wildlife Service has described the "independent utility" or "but for" test well in its Section 7 handbook as follows: "As a practical matter, the analysis of whether other activities are interrelated to, or interdependent with, the Proposed Action under consultation should be conducted by applying a "but for" test. The [lead agency] should ask whether another activity in question would occur "but for" the Proposed Action under consultation. If the answer is "no," that the activity in question would not occur but for the Proposed Action, then the activity is interrelated or interdependent and should be analyzed with the effects of the action. If the answer is "yes," that the activity in question would occur regardless of the Proposed Action under consultation, then the activity is not interdependent or interrelated and would not be analyzed with the effects of the action. (Section 7 Handbook at p. 4-27).

Even though the Sunrise Powerlink is not a connected part of the Proposed Action, it is among the reasonably foreseeable past, present and future projects. Final EIR/EA Table 5.0-1 identifies the Sunrise Powerlink as one of the more than 60 projects in the Final EIR/EA's cumulative impact analysis. There are 278 pages in the Final EIR/EA's cumulative impact analysis section providing substantial evidence for why the Proposed Action's contribution to environmental impacts is not cumulatively considerable. The fact that some projects on the cumulative impact list in Final EIR/EA Table 5.0-1 may have a significant direct impact in one or more environmental impact categories does not mean that the Proposed Project's contribution to an environmental impact category rises to the level of a cumulatively considerable impact.

For example, in Comment L-26 (see Final EIR/EA Responses to Comments), the comment asserted the Sunrise Powerlink impacts to big horn sheep and golden eagles were significant and imputed to the Proposed Action. Yet as explained in Response to Comment L-26, the Project makes no contribution to biological impacts to big horn sheep

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** *(continued)*

**Response to Comment 2:** *(cont'd.)*

and golden eagles and therefore lacks any nexus to whatever biological impacts the Sunrise Powerlink may have on these species. Likewise, even though the comment asserts that the Sunrise Powerlink will have an unmitigable threat of increased wildland fires, the Final EIR/EA provides substantial evidence that the Proposed Action does not have a significant impact on fire hazards.

In addition, past, present and reasonably foreseeable future projects necessary to construct renewable energy facilities sufficient to meet the renewable energy portfolio levels in California and five other Southwest states have been analyzed in BLM's Draft Solar Energy Programmatic EIS (Solar Energy PEIS). The Sunrise Powerlink is identified among the cumulative projects in the Solar Energy PEIS.

among many other significant cumulative adverse impacts, represents a significant and unmitigable threat of increased wildland fires and decreased abilities for firefighting.

**Project Description is Inadequate /conflicting information:**

**Full project description / solar units / impacts / costs/ mitigation not yet known**

**New 18' x 21' Soitec / Concentrix CPV tracking modules or low profile PV?**

The full project description, impacts, and mitigation measures have not yet been fully determined, described, or made available for full public review and comment. We still don't know if this 946 acre project will utilize a more low-profile PV array system or if the much more high-profile (18 wide 21 feet tall) and visually invasive Soitec /Concentrix Concentrating PV tracking modules will be used, as allowed with approval /certification of this FEIR/EA (2.1.3 - 2.1.3.1 Description of Solar Energy Facility CPV Solar Modules @ page 2-8) and the CUP (S-1 Authorized Scope of Activities @ page 7). Both PV and CPV tracking modules are considered in this FEIR/EA--with the option left open and unanswered.

There are 3 undetermined /uncommitted choices for Agriculture Resource mitigation options for the what we believe to be the Significant and Cumulative Adverse Impacts / Effects related to the 30-40 year conversion of approximately 900 acres of Prime Farmland and land of Statewide Importance at this project. The number, size, and legitimate locations, with quality mapping, of all the cumulative projects, both identified and not yet identified, has not yet been fully determined or documented. Thus, the details, impacts, and related mitigation measures have not yet been disclosed for public review and comment. The public has a right to see and comment on the entire project, cumulative projects, the related impacts, and the selected and documented mitigation and mitigation funding rather than the multiple choice proposed but open ended mitigation options.

**New Information / Significant cumulative adverse impacts:**

**CALISO's Public Grid Generation Queue shows**

**6, 825 MW for 23 energy projects connecting to the Imperial Valley Substation**

**The FEIR/EA shows 2,988 MW for 9 energy projects**

**This increases impacts and reduces reliability of the grid**

The most current CALISO Grid Generation Queue is linked below and incorporated by reference. According to our calculations, it documents a total 6,825 MW for 23 renewable energy projects that are all in line to connect to the grid, all via new transmission lines, at the same Imperial Valley Substation that is the root for both the existing 500kV Southwest Powerlink and the litigated and yet to be built 500 kV Sunrise Powerlink. This massive transmission overload in one concentrated geographic area adjacent to the US/Mexico border

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)**

**Response to Comment 3:**

The Final EIR/EA properly disclosed and analyzed the impacts of both CPV and PV options in Sections 4.1 and 5.1 and properly concluded there were no significant visual impacts. Please also refer to Response to Comment 19.

**Response to Comment 4:**

Final EIR/EA pages F-4 through F-6 identify that changes were made in the Draft EIR/EA's analysis of agricultural impacts to reflect new information and policies in the County regarding the agricultural impacts of solar projects. Following public workshops and public hearings on the issue, the County determined that for renewable energy projects with applications already pending, the County should evaluate their agricultural impacts on a case-by-case basis. Therefore, the Proposed Action's agricultural impacts were evaluated. The lead agency has relied upon substantial evidence from experts at the Department of Conservation that agricultural impacts from solar projects with an agricultural restoration plan are temporary, rather than permanent impacts because there is no permanent loss of valuable agricultural soils. Here, the Proposed Action has always had an agricultural restoration plan as a project design feature required by the Proposed Action's ground lease (see Project Description at Final EIR/EA Section 2.1.3.12). Lead agencies are permitted to presume that a project will be implemented consistent with the project description. (Environmental Council of Sacramento v. City of Sacramento (2006) 142 Cal. App. 4th 1018, 1035.) Therefore, the record shows the applicant has already selected Option 3 (reclamation plan with posting of financial security prior to issuance of any building permit.) Because it is a condition of the project, it is a fully enforceable mitigation measure even if the County was not entitled to presume the Proposed Action would be implemented in accordance with the ground lease in the Project Description.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 4:** (cont'd.)

In short, the County is relying on substantial evidence to demonstrate that there is no significant agricultural impact from the project and the public is not prejudiced in their ability to comment on the analysis or the selected mitigation, which only serves to enhance the enforceability of the applicant's existing legal requirement to comply with the terms of its ground lease.

**Response to Comment 5:**

CEQA and NEPA require a cumulative impact analysis of past, present and reasonably foreseeable future projects.

For the Final EIR/EA an expanded approach to the list method suggested in CEQA Guidelines Section 15130(b)(1)(A) is followed. A comprehensive list of all past, present, and reasonably foreseeable future projects that are considered in the cumulative impacts analysis is provided in Table 5.0-1 of the Final EIR/EA.

The cumulative impacts analyses define the cumulative effects study area by resource area and include a narrative assessment of cumulative impacts, combined with a table summarizing projects considered and cumulative impacts to the resource.

The Final EIR/EA at Section 5.0 correctly identifies and analyzes the cumulative impacts of 63 projects and found no significant impacts with proposed mitigation. In addition, past, present and reasonably foreseeable future projects necessary to construct renewable energy facilities sufficient to meet the renewable energy portfolio levels in California and five other Southwest states have been analyzed in BLM's Draft Solar Energy Programmatic EIS (Solar Energy PEIS) that is currently undergoing public review. This project does not formally tier off of the Solar Energy PEIS in its draft form, but cites to the expert opinions and analysis in the PEIS and its technical reports to support its cumulative impact conclusions.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 5:** (cont'd.)

The Final EIR/EA properly analyzes 57 out of the 63 projects on the cumulative list established at the time of the Notice of Preparation under CEQA, which is the proper baseline for analysis. The list overstates the true impacts of these projects because not all of them will go on to be constructed due to factors such as failure to secure other necessary permits, failure to secure funding, competition over the same pool of federal funding assistance, etc. The Solar Energy PEIS estimates that about one-third of public land project applications for renewable energy may never be built.

This comment suggests that the appearance of a proposed transmission interconnection project on the CAISO Queue justifies inclusion in the cumulative impact analysis for the Proposed Action. The CAISO queue is the first step in the project development lifecycle. Transmission capacity is considered confidential information by the CAISO. Therefore many projects are forced to enter the queue in order to see if there is available capacity. As evidenced by the number of withdrawn projects within the queue, many portions of the grid do not have the capacity to support the projects and therefore these projects never materialize. Additionally, information about projects within the queue is highly confidential and neither the County nor the BLM have any way of identifying information about these projects unless they have submitted a land use application. Upon careful review, the CAISO Queue includes 15 projects with application dates of 7/30/2010 or later. CEQA requires analysis of reasonably foreseeable projects, those projects that are known as of the date of the Notice of Preparation. Therefore, the 15 projects with application date of 7/30/2010 or later were correctly not included in this analysis. Furthermore, CAISO manages the transmission grid and is the entity responsible for assuring system reliability and security, not the BLM or the County of Imperial.

The Final EIR/EA, Section 5.0, Table 5.0-1 -List of Projects Located at or Within the Vicinity of the Proposed Project, includes the past, present and reasonably foreseeable projects that were considered for cumulative impact analysis for all resource areas analyzed.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** *(continued)*

**Response to Comment 5:** *(cont'd.)*

A project listed in this table may fall within the geographic scope for visual resource or biological resource analysis, but not within the scope defined for culture resource impact analysis. Section 5.0 also includes tables that identify each project that is included in the analysis for each resource area. Furthermore, the analysis includes the rationale for inclusion/exclusion of each past, present or reasonably foreseeable project within each resource area analyzed.

Regarding earthquake and terrorist attacks, please see Response to Comment L-29 (see Final EIR/EA Responses to Comments).



in an earthquake zone marked for a massive quake larger than the 7.2 in 2010, is questionable at best and incredible risky, foolish, and expensive at worst. And it is all so unnecessary when energy production is rapidly shifting to point of use for both security and economics. Just look at our military bases that are shifting away from the grid, that is vulnerable to cyber attacks or acts of foreign or domestic terror, and catastrophic failure, in order to achieve both energy independence and security.

Another 549.45 MW for 2 more desert renewable energy projects, in the same area and Active Clusters, are in line to connect to the 500 kV Sunrise Powerlink, likely at the proposed Ocotillo Express Wind substation and loop-in, near the rural low-income community of Ocotillo, where many of the residents are seniors, veterans, and /or sensitive receptors : <http://www.caiso.com/2826/2826b8435fe20.pdf>.

The numbers and projects listed above do not include the 1,552 MW for another 14 commercial industrial wind and solar projects proposed in rural Eastern San Diego County and Northern Baja that are in the CAISO queue to connect to the proposed ECO Substation, the proposed Boulevard Substation expansion and the Crestwood Substation: <http://www.caiso.com/2826/2826b8435fe20.pdf>.

The FEIR/EA Table 5.0-1 at page 5-3 lists many projects that are neither renewable energy nor transmission line projects. And they are more widely scattered around Imperial Valley (Niland, Calipatria) rather than in the same general impacted area as revealed by the current CAISO Queue list, referenced above. This concentrates the majority of the significant cumulative adverse impacts at and near the tiny low income communities of Ocotillo Seeley.

This new information more clearly demonstrates the very real onslaught of large-scale industrial energy and EMF producing and transmitting projects and the increased significant cumulative adverse impacts /effects that will result from the industrialization of both the environmentally, biologically, and culturally sensitive desert lands and habitats, along with the productive and Prime Farmland and Farmland of Statewide Importance. Additional damage and impacts will occur to the west.

#### **Failure to comply with the Farmland Protection Policy Act (FPPA) sets a dangerous precedent**

**Imperial Valley farmland is a unique and irreplaceable resource**

**With a year-round growing season and access and established rights to  
irrigation water from the Colorado River**

**Significant and Cumulative Diversion of water from farming will likely result in  
additional future political water grabs by distant cities**

Federal funding, under Section 11703, 1703, through Production Tax Credits, or other federal programs, for a project that will result in the conversion of approximately 900 acres of Prime

5-26-11: ISEC South FEIR/EA comments from BAD/POC/ECCAC/Tisdale

Page 3

## **RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)**

### **Response to Comment 6:**

Please refer to Response to Comment 5.

### **Response to Comment 7:**

Please refer to Response to Comment 5.

### **Response to Comment 8:**

Please refer to Response to Comment 5. Under NEPA and CEQA, the scope of the cumulative project list depends upon the impact category, not whether the other projects on the list are all energy-related projects.

### **Response to Comment 9:**

There is no violation of the Farmland Protection Policy Act ("FPPA"). FPPA regulations 7 CFR 658 implement the FPPA. It states, "The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or non-federal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a non-federal unit of government applies for Federal assistance to convert farmland to non-agricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effect and suggested alternatives, the landowners want to proceed with conversion, the Federal agency on the basis of the analysis set forth in section 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to non-agricultural uses are subject to this Act." (7 CFR 658.3(c)).

In addition, Congress found that "the Department of Agriculture and other Federal agencies should take steps to assure that the actions of the Federal Government do not cause United States farmland to be irreversibly converted to nonagricultural uses in cases in which other



**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 9:** (cont'd.)

national interests do not override the importance of farmland protection nor otherwise outweigh the benefits of maintaining the farmland resources." (7 U.S.C. 4201(a)(7)). Furthermore, the "purpose of [the FPPA] is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses." (7 U.S.C. 4201(b)).

Under the regulations, the federal agencies have the authority to provide or deny the requested assistance. As of the date of the comment, no federal agency has made a decision to grant financial assistance to the Proposed Action. Approval of a NEPA document is not a decision to grant financial assistance. Prior to making those decisions, those federal agencies will either comply with the FPPA or determine that the FPPA is not applicable. NEPA compliance and any BLM decision to grant a ROW for the Proposed Action are not dependent on demonstrating compliance with the FPPA. Only assistance and actions that would irreversibly convert farmland to non-agricultural uses are subject to FPPA and BLM's decision to grant a ROW on federal land that is not being used for agriculture would not convert farmland.

The County of Imperial's decision to grant a CUP would temporarily convert farmland to a non-agricultural use. Furthermore, if DOE and Department of Treasury actually decide to provide financial assistance to the Proposed Action, they would be taking an action to provide assistance in the temporary conversion of farmland. However, the County of Imperial, DOE and Department of Treasury actions would not irreversibly convert farmland because the Proposed Action is required by its ground lease to restore the site to agricultural use.

The Final EIR/EA demonstrates the project's compliance with Imperial County agricultural policies.

Farmland and Farmland of Statewide Importance is a violation of the FPPA and Imperial County policies and sets a dangerous precedent for future conversion of important farm lands for similar projects. (see Important Farmlands graphic of project site at Figure 3.9-1 at page 3.9-4)

**BLM and DOE have failed, together and independently, to fully comply with NEPA and the Loan Guarantee Program (see ES-12) requirements for two Major Federal Actions: (1) EA (should have been EIS) (2) Loan Guarantee Program Farmland Conversion Impact Rating Form (AD-1006)**

The following response from the BLM El Centro FO project contact, in a May 24th e-mail response to Donna Tisdale, is erroneous: "In regards to your third request for the Farmland Conversion Impact Rating, it does not fall under BLM jurisdiction as the lands are private".

Both the BLM, as the federal lead agency, and the DOE as a cooperating agency on the FEIR/EA, and as lead agency on the DOE Loan Guarantee Program, are required to fully comply with the FPPA. It stands to reason that the Department of Treasury is also required to comply with the FPPA for any of its programs and ISECS project related funding applications

#### The Farmland Protection Policy Act Fact Sheet excerpts:

Congress enacted the Farmland Protection Policy Act (FPPA) as a subtitle of the 1981 Farm Bill. The purpose of the law is to "...minimize the extent to which Federal programs contribute to the unnecessary conversion of farmland to nonagricultural uses..." (P.L. 97-98, Sec. 1539-1549; 7 U.S.C. 4201, et seq.). The FPPA also stipulates that federal programs be compatible with state, local and private efforts to protect farmland...

#### IMPLEMENTATION

FPPA requires federal agencies to examine the impact of their programs before they approve any activity that would convert farmland.

Agencies have the option of determining whether a site contains farmland—and therefore falls under the act—without input from NRCS. To rate the relative impact of projects on sites subject to the FPPA, federal agencies fill out a not required, to deny assistance to private parties and state and local governments undertaking projects that would convert farmland. The only recourse for reviewing agency decisions is litigation brought by state governments.

In addition to project evaluation, FPPA directs federal agencies to review their policies and procedures to determine whether they comply with the law. Agencies must develop proposals and submit annual reports to NRCS until NRCS determines an agency has fully complied.

#### Farmland Conversion Impact Rating Form (Form AD-1006)

The rating form is based on a Land Evaluation and Site Assessment (LESA) system. LESA is a numerical system that measures the quality of farmland. LESA systems have two components. The Land Evaluation element rates soil quality. The Site Assessment component measures other factors that affect the farm's viability, including but not limited to proximity to water and sewer lines and the size of the parcel. In general, the higher the LESA score, the more appropriate the site is for protection.

Under FPPA, federal agencies sponsoring a project subject to the law complete a site assessment. NRCS is responsible for the land evaluation component. Sites receiving a combined score of less than 160 do not require further evaluation. Alternatives should be proposed for sites with a combined score greater than 160 points.

(Source: [www.farmlandinfo.org](http://www.farmlandinfo.org) : [http://www.farmland.org/about/mission/documents/AFT\\_FPPA\\_8-04.pdf](http://www.farmland.org/about/mission/documents/AFT_FPPA_8-04.pdf) )

5-26-11: ISEC South FEIR/EA comments from BAD/POC/ECCAC/Tisdale

Page 4

9  
Cont.

## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 10:

BLM and DOE are not in violation of the FPPA. Please refer to Response to Comment 9.

Neither compliance with FPPA nor analyzing the agricultural impacts through the federal Farmland Conversion Impact Rating Form is required to comply with NEPA.

First, compliance with NEPA is based on whether the findings required by NEPA are supported by substantial evidence, which can include evidence anywhere in the record, including the existing LESA evaluation. NEPA and FPPA are separate statutes and the comment's assumption that BLM must demonstrate other agencies will comply with the FPPA in order for BLM to comply with NEPA or to grant a ROW is incorrect.

Second, the FPPA regulations make it clear that an "agency may determine whether or not a site is farmland as defined in section 658.2 or the agency may request that NRCS make such a determination. If an agency elects not to make its own determination, it should make a request to NRCS on Form AD-1006, the Farmland Conversion Impact Rating Form." (7 C.F.R. 658.4(a)). Furthermore, the FPPA regulations recognize that state and local governments can adopt their own LESA systems to evaluate the productivity of agricultural land and its suitability for conversion to nonagricultural use and those federal agencies can use those state and local LESA systems to make their evaluations. (7 C.F.R. 658.4(e)). Therefore, it is appropriate for BLM, DOE, the Department of Treasury and the County to rely on the LESA prepared for the County (Appendix F).

Third, the FPPA regulations do not require the evaluation to be performed as part of the NEPA process. It is only a non-binding guideline. (7 C.F.R. 58.4(e)).

The May 10th letter from the DOE LPO advised Tenaska that both their Loan Guarantee Applications for ISECS and ISECW were placed "on-hold". However, their applications have not been rejected and it appeared from the "on hold" form letter, that was provided in several articles, that Tenaska was informed that they may still be eligible for federal funding opportunities.

The Draft MOA with BLM, DOE, ACOE, SHPO and Lightsource Renewables LLC addresses Section 106 and Title XVII of the 2005 Energy Policy Act of 2005 as Amended by Section 405 under ARRA: See Appendix K  
[http://www.blm.gov/peddata/etc/media/lib/blm/ca/pdf/eicentro/nepa/2010/ea/isec\\_south.Par.55985.File.dat/FAppKISECs\\_MOA.pdf](http://www.blm.gov/peddata/etc/media/lib/blm/ca/pdf/eicentro/nepa/2010/ea/isec_south.Par.55985.File.dat/FAppKISECs_MOA.pdf)

The Farmland Conversion Rating form is based on a Land Evaluation and Site Assessment (LESA) system. The FEIR/EA LESA (Appendix F), conducted for Imperial County, does not qualify, nor can it be adopted by the DOE, for the required federal compliance with the FPPA.

We also point out that the FEIR/EA LESA erroneously gave a zero score for the adjacent "protected" BLM land on the western boundary, within the Yuha Desert ACEC, when it should have been ranked as protected from urban type development. This would have provided and even higher farmland value ranking /score for the project site. The BLM and DOE need to address the protected land issue in their own Farmland Conversion Impact Rating Form and circulate it for public comment through a Supplemental EA or a new EIS that we believe is fully warranted and required.

DOE Loan Guarantee Program legal and regulatory requirements under NEPA have not been met. According to the DOE Loan Program Office NEPA FAQs an EIS was required along with a federal Farmland Conversion Impact Rating Form (AD-1006): ([https://doe.energy.gov/?page\\_id=375](https://doe.energy.gov/?page_id=375))

The following list was taken from the linked DOE Loan Program Office NEPA FAQ at #9 *When is an EIS required?* We have added emphasis to the items we believe are relevant to this project and that support our previous and current request for a full EIS, for the ISECS project, that takes into full account the new information and cumulative projects provided in these comments:

- *The project would significantly affect public health or safety*
- *There are unique characteristics in the geographic area of the project, such as park lands, historic or cultural resources, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas that would be affected by the project;*
- *There is any controversy over the degree of environmental effects of the project;*
- *The project presents unique or unknown environmental risks;*
- *The project sets a precedent for future actions that are likely to have significant environmental impacts;*
- *The action is related to other actions which, taken together, could have significant cumulative impacts;*

## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 11:

Comment noted. This comment confirms that DOE has not made a decision to provide financial assistance and therefore DOE could not have violated FPPA.

### Response to Comment 12:

Comment noted.

### Response to Comment 13:

The FPPA regulations make it clear that an "agency may determine whether or not a site is farmland as defined in section 658.2 or the agency may request that NRCS make such a determination. If an agency elects not to make its own determination, it should make a request to NRCS on Form AD-1006, the Farmland Conversion Impact Rating Form." (7 C.F.R. 658.4(a)). Furthermore, the FPPA regulations recognize that state and local governments can adopt their own LESA systems to evaluate the productivity of agricultural land and its suitability for conversion to nonagricultural use and that federal agencies can use those state and local LESA systems to make their evaluations. (7 C.F.R. 658.4(e)). Therefore, it is appropriate for BLM, DOE, the Department of Treasury and the County to rely on the LESA prepared for the County (Final EIR/EA Appendix F).

### Response to Comment 14:

As explained in the LESA (Final EIR/EA Appendix F), protected resource lands are those lands with long-term use restrictions that are compatible with or supportive of agricultural uses of land. Included among them are the following:

- Williamson Act contracted land;
- Publicly owned lands maintained as park, forest, or watershed resources; and,
- Lands with agricultural, wildlife habitat, open space, or other natural resource easements that restrict the conversion of such land to urban or industrial uses.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 14:** (cont'd.)

While the adjacent desert lands to the west may qualify as a protected resource land, agriculture is not an allowed use within this portion of the BLM lands pursuant to the CDCA Plan. Also, because the percentage of protected land within the project site's zone of influence (ZOI) is less than 40%, the Surrounding Protected Resource Land Rating score is zero. Agricultural lands make up the majority of the land within the sites ZOI to the north and east. However, these lands do not contain an agricultural easement. Also, land to the south is located in Mexico, is not utilized for farming activity, and is not subject to any agricultural easement or restriction. Land located immediately to the west is located within public lands (BLM lands), which has limited use and would not be converted to urban or industrial uses, although other uses are allowed, such as transmission facilities.

**Response to Comment 15:**

The DOE is not the lead federal agency for NEPA purposes so DOE guidance on the form of NEPA document is not applicable to this project. DOE has not made a decision to provide financial assistance to the Proposed Action. Please refer to Response to Comment 9. The Proposed Action is in compliance with FPPA because it does not irreversibly convert farmland. Please refer to Response to Comment 9. Regardless, if the FPPA applied, the FPPA grants DOE flexibility not to use Form AD-1006 and to instead rely on state or local LESA analysis systems, like the one in Appendix F. Please also refer to Response to Comment 13.

**Response to Comment 16:**

DOE's Guidance on when an EIS is required is not applicable to this project because DOE is not the lead agency for NEPA purposes. Nevertheless, the comment is noted. BLM could adopt a Mitigated FONSI also as described in the Council on Environmental Quality's Memorandum of January 14, 2011.



**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 17:**

Comment noted. The Proposed Action is a temporary conversion from agricultural use to non-agricultural use. The lease stipulates that the site will be restored to agricultural use upon expiration of the lease. Therefore, the Proposed Action does not constitute an irreversible conversion of farmland. In fact, ground disturbing activities resulting from implementation of the proposed project would disturb and alter the soils physical, biological and chemical properties less than traditional agricultural practices such as plowing, subsoiling, land leveling, installation of subsurface drainage systems, and the application of synthetic fertilizers, herbicides and pesticides. See also Response to Comment 4.

**Response to Comment 18:**

Comment noted. Please refer to Responses to Comments 17 and 45.

- The project adversely affects any sites, structures, etc., listed in or eligible for listing in the National Register of Historic Places;
- The project adversely affects an endangered or threatened species or its habitat that have been determined to be critical under the Endangered Species Act;
- The project threatens a violation of Federal, state, or local laws or requirements imposed for the protection of the environment;
- The project would have a disproportionate and adverse impact on minority or low-income populations.

<http://www.epa.gov/compliance/basics/nepa.html#requirements>

**American Farmland Trust (AFT) Says:**

**Conservation and Farmland Protection is at a Crossroads more than 23 million acres of agriculture land lost to development—almost 2 million acres have already been lost in California.**

**California and Florida** (two of three with most loss) **account for nearly 1/2 of acreage devoted to growing fruit and vegetables nationwide**

"AFT analysis of additional data from the National Resources Inventory also shows that each of the 48 contiguous states lost agricultural land to development," Scholl adds. ["More than 23 million acres of agricultural land were converted from 1982-2007—an area the size of the state of Indiana."](#)

"Simply put, conservation and farmland protection are at a crossroads," Scholl adds. "Land and healthy soil are the strategic resources critical to our nation's ability to feed itself and to secure our nation's future. Conservation programs are vital to maintaining those resources."

Scholl notes that key conservation programs, which help farmers improve and protect soil, farmland and water were cut significantly in the FY2011 federal budget. "At a time when we are debating which public programs do the most for our money—it seems prudent to invest our public agricultural support conservation now, so we are best positioned to meet the challenges ahead." (<http://www.farmland.org/news/pressreleases/Conservation-and-Farmland-Protection-at-a-Crossroads.aspx>)

**More from AFT:**

**The National Resources Inventory**

During the past 30 years, much of America's most fertile farmland has been lost to wasteful development. The visible signs of a changing landscape can be seen as farm fields fade beneath sprouting McMansions. Thankfully, the National Resources Inventory helps to provide a framework for understanding the true immediacy of protecting our nation's farm and ranch

lands. The NRI, conducted by the USDA Natural Resources Conservation Service (NRCS) in cooperation with Iowa State University's Center for Survey Statistics and Methodology, is a survey of the nation's non-federal lands that tells the story of farmland loss by the numbers.

The most recent NRI, covering the 25-year period between 1982 and 2007, reveals that more than 23 million acres of America's agricultural land have been lost to development—an area the size of Indiana. According to the NRI, not a single state in the continental United States was left untouched. In fact, the most fertile land was developed at a disproportionately high rate. Thirty-eight percent of the agricultural land developed nationwide was prime, the land that is best suited to produce food and other agricultural products. <http://www.farmland.org/programs/protection/American-Farmland-Trust-Farmland-Protection-Farmland-by-the-numbers.aspx>

**ISECS (C Solar South) and ISECW (C Solar West) are both on BLM's Fast Tracked Priority Project list and identified as thin film solar projects.**

New information regarding the recently announced use of the Soitec/Concentrix Concentrating PV modular tracking units that require 173 units to generate 1 MW. For the proposed 200 MW project, 34,600 module units will be required. Each module measures 18' wide x 21' feet tall. This contrasts with the response to comments and photos provided that represent low-profile PV installations. Photos available on the [www.soitec.com](http://www.soitec.com) website provide evidence of the module's size and evident glare potential. BLM's Priority Project List: [http://www.blm.gov/bldata/content/wa/en/prog/energy/renewable\\_energy/priority\\_projects.html](http://www.blm.gov/bldata/content/wa/en/prog/energy/renewable_energy/priority_projects.html)

We now know through press releases and announced SDG&E Power Purchase Agreements, that C Solar West has agreed to use Soitec/Concentrix CPV tracking modules. It is our strong opinion, based on conversations with the applicants and others, and the recent flurry of SDG&E PPA for another 155 MW of the same Soitec modules, that C Solar South also plans to use the same CPV tracking modules. Project Applicants / developers did not step forward to dispute public comments made on that point at the Imperial County Planning Commission hearings on May 11, and May 25th. They had every opportunity to do so. The FEIR/EA leaves the door open for CPV tracking. However, the CPV tracking units referenced in the FEIR/EA at 2.1.3.1 PCV Solar Modules page 2-8 are described as measuring 2' wide x 4' long x 4" deep. The Soitec /Concentrix CPV modules measure 18' wide x 21' tall. This represents a new and significant visual impact in a currently open landscape that has not been disclosed, analyzed or addressed. If these large units are used it will set a precedent for ISECW and other similar projects.

CA	Imperial	Ocotillo Sol (San Diego Gas & Electric)	14 MW (PV)	115 acres	Pending
CA	Imperial	C Solar West (LightSource Renewables)	250 MW (thin film PV)	Private land*	Draft EA Nov. 2010
CA	Imperial	C Solar South (LightSource Renewables)	200 MW (thin film PV)	Private land*	Draft EA Dec. 2010
CA	Imperial	Centinela (Centinela Solar Energy, LLC)	275 MW (thin film PV)	Private land*	Pending

5-26-11: ISEC South FEIR/EA comments from BAD/POC/ECCAC/Tisdale

Page 7

## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 19:

As discussed in the Final EIR/EA, analysis of impacts to visual character is subjective by nature because the qualities that create an aesthetically pleasing setting will vary from person to person. Nevertheless, there is substantial evidence to support the Final EIR/EA's conclusion that the project will not have a significant visual impact.

The baseline for measuring impacts is generally the date of the NOP and when the project is proposing to implement one of several technology options depending on future market conditions, in order to assure that the Final EIR/EA represents a good faith effort to provide information to the public and decision-makers, it is appropriate for the lead agency to analyze the options under the worst-case scenario. Just because a project description has multiple options, does not mean the project description is unstable and is being changed throughout the analysis. Rather the project description consistently has two options for the solar generation technology, which are analyzed throughout the Final EIR/EA. Lead agencies are permitted to presume that a project will be implemented consistent with the project description when an option is finally selected. (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal. App. 4th 1018, 1035.).

Furthermore, the requirement that a project description be consistent throughout the EIR does not mean that the project cannot change as it proceeds through CEQA review and other processing requirements. As the court noted in *County of Inyo v. City of Los Angeles* (1977) 71 Cal App 3d 185, 199:

*The CEQA reporting process is not designed to freeze the ultimate proposal in the precise mold of the initial project; indeed, new and unforeseen insights may emerge during investigation, evoking revision of the original proposal.*

This holding has been repeated in a number of project description cases. See, e.g., *Western Placer Citizens for an Agric. & Rural Env't v County of Placer* (2006) 144 Cal. App. 4th 890, 898; *Kings County Farm Bureau v City of Hanford* (1990) 221 Cal App 3d 692, 736.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 19:** (cont'd.)

Thus, an EIR does not violate CEQA when the lead agency approves a smaller project than that described in the EIR, or when an agency approves part of the project that was initially analyzed in the EIR. See *Dusek v Redevelopment Agency* (1985) 173 Cal. App 3d 1029, 1040, in which the EIR analyzed an overall redevelopment project. When the lead agency approved only part of the project (demolition of a hotel), the court rejected a challenge contending that the project description in the EIR was misleading. Similarly, in *Western Placer Citizens for an Agric. & Rural Env't v County of Placer* (2006) 144 Cal App 4th 890,, revision to a mining project's phasing plan that reduced environmental impacts did not require revision of the project description.

Therefore, by analyzing the worst-case scenario under both the CPV option and the PV option, no matter which option is ultimately selected, the decision-makers and the public are assured that the environmental impacts are equal to or less than what was analyzed and disclosed in the Final EIR/EA.

At this time no final technology selection has been made, but the applicant has indicated to the County the use of fixed mounted PV panels. As analyzed in the Final EIR/EA, neither the PV option nor the CPV option would result in a significant environmental impact. Since the DEIR/EA was published, the public has had and will continue to have the opportunity to comment on the environmental impacts of both types of technologies prior to a final decision by the decision-makers.

This comment incorrectly states that the Soitec/Concentrix Concentrated PV modular tracking units have been selected for this project. No final selection of the solar array technology has been made for the Project. The picture of the low-profile PV array is intended to provide an example of the low profile PV option. It is not intended to represent the CPV option. If the Soitec/Concentrix PV modular tracking units is selected, then this would be proper under CEQA because the environmental impacts of the CPV option have been analyzed in the Final EIR/EA discussion of the CPV option.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 19:** (cont'd.)

See Final EIR/EA Section 2.1.3.1., 4.1 and 5.1. Existing views onto the project site are limited, available specifically from SR-98, Pulliam Road, Anza Road, and Cook Road. Due to the flat topography of the project site and the surrounding area, besides the existing transmission lines located within the BLM Utility lands (within designated corridor "N"), the project site is not readily visible from surrounding roads and Key Observation Points (KOPs). It is visible from immediately surrounding agricultural land and roads adjacent to the site; however, agricultural land is not considered a significant visual resource and no individuals are present on such lands to view the site. The project is not located in a designated scenic vista nor are the roads abutting or surrounding the project designated or proposed scenic roadways. Therefore, no impact to the visual character or quality is anticipated regardless of whether the CPV option or the PV option is chosen.



Photo from the corner of Highway 98 and Pulliam. Note the hay stacks on the left of the road approximately half a mile away. Hay is stacked to approximately 20 feet in height.



**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** *(continued)*

**Response to Comment 20:**

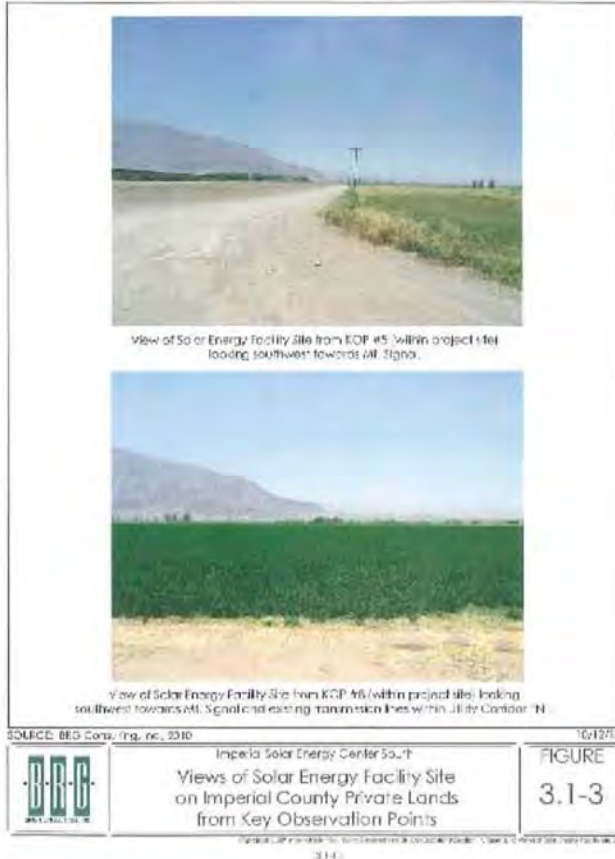
Please refer to Response to Comment 19.

In addition, this comment confuses the size of the module with the size of the panels. Per the description in the FIER/EA Section 2.1.3.1, twelve (12) CPV modules collectively comprise a supermodule and twelve supermodules are mounted atop a two-axis elevation over azimuth tracker which follows the sun's daily trajectory.

This comment also sites a concern that CPV may be used on this site and later references the SDG&E Advice Letter (2223-E) that was sent to the PUC for approval of a Power Purchase Agreement related to this site. Advice Letter 2223-E clearly states on the first page that the technology to be used in the related PPA is fixed mount photovoltaic panels.

Finally, the comment speculates that the applicant has selected the Soitec CPV tracking modules for the South Project. In fact, no final decision has been made as market conditions will determine the final technology selected, but the County understands that the applicant is strongly considering the use of fixed mounted PV panels. As analyzed in the Final EIR/EA, neither the PV option nor the CPV option results in a significant environmental impact. Since the DEIR/EA was published, the public has had and will continue to have the opportunity to comment on the environmental impacts of both types of technologies prior to a final decision by the decision-makers.

The Figure 3.1-3 photos, below, document the current agricultural use and generally pleasing Open Space rural agricultural landscape that adds to the visual appeal of Imperial Valley. Food Grows Where Water Flows



21

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)**

**Response to Comment 21:**

Comment noted. As discussed in the Final EIR/EA, analysis of impacts to visual character is subjective by nature because the qualities that create an aesthetically pleasing setting will vary from person to person.

**Significant, cumulative and adverse, visual impacts are ignored**

**Evidence of glare impacts from CPV module of choice**

"Construction of the Proposed Action would alter the existing visual character of the area and its surroundings as a result of converting agricultural land to a solar energy facility. ("FEIR/EIS page 5-15 )



The two promotional photos, above, of the Soitec/Concentrix CPV tracking modular units, were found on the linked Soitec website. Note the size of these CPV units in comparison to the people standing next to them and under them in these promotional and press photos.

We believe these oversized CPV tracking modules will be used at both the ISECS, ISECW sites and at other project sites in the area, and in San Diego. **Note the evident glare in the photo on the right. This represents a potential aviation hazard or hazard to drivers on Hwy 98 or other adjacent roadways.**

Source: <http://www.soitec.com/en/solar-energy/>

<http://www.soitec.com/en/products-and-services/solar-cpv/operation-and-maintenance/>

**Visual impacts: 3.1.2.3 Light and Glare:** The photo above shows the potentially significant and adverse introduction of light and glare into an area that is described in the EIR/EIS as predominantly used for agriculture and desert lands: "there is little light and glare that exists within the project area" other than the result of motor vehicles traveling on surrounding roadways."

5-26-11: ISEC South FEIR/EIS comments from BAD/POC/ECCAC/Tisdale

Page 9

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)**

**Response to Comment 22:**

Soitec was contacted for more information regarding this photo. Soitec reported that the photo on the right is a promotional photograph for use in Soitec marketing materials. For the purposes of the photo, the solar trackers were deliberately maneuvered out of their operating position to face the photographer. The photo does not depict how the solar field would operate.

An appropriate visual impact analysis was performed in the Final EIR/EA for the CPV option and appropriately concluded there were no significant impacts based on CEQA and NEPA indicators. See Final EIR/EA Section 2.1.3.1, 4.1 and 5.1.

**Response to Comment 23:**

Please refer to Response to Comment 22.

Highway 98 is one-half of a mile (0.5 mile) from the project site at its closest point. This distance is too far to pose a significant glare risk to motorists on SR-98.

The project will comply with FAA regulations to ensure the project does not create an aviation hazard. The project has been reviewed by the County Airport Land Use Commission and determined to be consistent with the County's adopted Airport Land Use Compatibility Plan.

**Response to Comment 24:**

Please refer to Responses to Comments 19 through 23.

RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

Response to Comment 25:

The article does not refer to this project.



## Soitec announces major U.S. CPV solar power project

Tenaska Solar Ventures Selects Soitec's Concentrix CPV Solar Power Technology To Produce 150 Megawatts of Clean Energy For San Diego Gas & Electric

Soitec will build a new 200MW CPV manufacturing facility in the San Diego region.

*Bernin, France and San Diego, CA, March 10, 2011* — Soitec (Euronext Paris), a world-leading supplier of advanced solutions for the electronics and energy industries, today announced that its Concentrix concentrated photovoltaic (CPV) technology has been selected by Tenaska Solar Ventures to produce 150 megawatts (MW) of clean energy for San Diego Gas & Electric. The new CPV solar power plant, named Imperial Solar Energy Center (ISEC) West, will be constructed on a 1057-acre site in Southern California's western Imperial County, and is expected to be completed in 2015....

"The ISEC West project has applied for a U.S. Department of Energy loan guarantee. Upon receipt of the guarantee and closing of its agreement with Tenaska, Soitec will implement capacity investments to construct its San Diego area factory and pursue options for related financing. The factory location is anticipated to be announced this summer, with completion expected within 18 months of construction start. Soitec's delivery of the CPV systems to the ISEC West solar power plant will begin in early 2013 and finish in 2015. At full capacity, Soitec's San Diego operations will generate up to 450 jobs in the local area.

<http://www.soitec.com/en/news/press-releases/soitec-announces-major-us-cpv-solar-power-project-623/>

25

The San Diego Union Tribune photo below was taken at the 1 MW (173 modules) Soitec / Concentrix installation on old mine tailings at Questa, NM. It is their largest installation to date.

Compare the size of the school bus to the CPV tracking units.



APRIL 19, 2011 | PHOTO BY [redacted]  
Schoolchildren from Questa, N.M., check out a new solar farm built by Soitec, a French company proposing to make similar panels in San Diego

<http://www.signonsandiego.com/news/2011/apr/20/solar-farm-a-sign-of-things-to-come/>

## Solar farm a sign of things to come

By [Onell R. Soto](#)

3 p.m., April 20, 2011

"...The panels, 18 feet wide and 21 feet tall, are anchored in cement blocks in topsoil that covers the tailings, which have the consistency of talcum powder.

A three-way deal between Soitec, SDG&E and solar developer Tenaska announced earlier this year will bring a \$100 million factory to San Diego County.

There, some 450 workers will manufacture the solar panels and the systems used to track the sun across the sky.

26

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## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 26:

The article does not refer to this project. The CPV tracking units are properly described in the *FIER/EA* Section 2.1.3.1.

### Response to Comment 27:

Same article. Please refer to Response to Comment 26.



The factory will supply a 150 megawatt Tenaska solar farm to be built on former farmland in Imperial County. SDG&E will buy the power, and made construction of the factory in San Diego a condition for the deal.

"We're creating jobs in San Diego," said Jim Avery, who buys electricity for SDG&E. "And these are good jobs."

The factory will also supply three solar farms, two in Boulevard and one in Borrego Springs, which Soitec is itself building in order to sell power to SDG&E.

Auberton-Hervé scouted possible locations for the factory this week. He said the company will decide where it will build by this summer.

The factory will use local suppliers whenever possible, and is to be built in San Diego because it's close to the Southwest deserts, where its panels work best.

"That local content, for us, is important," he said.

Right now, Soitec makes its panels in Freiburg, Germany, where the technology was pioneered by a company called Concentrix, which Soitec bought in 2009.

Because they are made of heavy glass and steel and are bulky, it's not economical to ship them around the world, said Clark Crawford, who heads Soitec's San Diego operations, on a private jet on the way to the event.

"We need to be close to the project site," he said, pointing out the design includes space between the lenses and the solar cell. Otherwise, "you're shipping a lot of air."

#### **Environmental Justice issues / impacts are significant**

**FEIR/EA statements /claims that NO SIGNIFICANT IMPACT WOULD OCCUR regarding Environmental Justice are erroneous (4.14 ES-80 / /3.14 /Affected Environment Socioeconomic Conditions)**

**The ISECS project and cumulative projects represent Significant Cumulative Adverse Socio Economic Impacts --not long-term benefits- to Imperial County, a low income high minority community -- related to cumulative conversion of farmland / loss of related jobs / potential loss of agricultural water sources based on 30-40 years of diversion**

Imperial Valley Press reported recently that the 2010 Census revealed that Imperial County is now 80.4 % Hispanic. Imperial County has long had a majority Hispanic population, one of the highest unemployment rates, and one of the highest rates of childhood asthma. They cannot tolerate losing long-term jobs and businesses that will be displaced by converting farm land into industrial energy production zones with related increased EMF and RFR impacts and related.

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Cont

28

## **RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)**

### **Response to Comment 28:**

"Environmental justice" refers to the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws. Fair treatment means that minority and low-income groups should not bear a disproportionate share of the negative environmental impacts of government actions. The comment suggests that the population of Imperial County, a low income, high minority community, would be harmed by negative impacts of the Proposed Action and cumulative projects.

At the solar proposed production site, the current land use of alfalfa and grass crops requires 2 full time employees, whereas the operation of the solar production facility would create 4 full time, long-term jobs, a 100 percent employment increase at a significantly higher wage rate. During the construction phase of the project, approximately 300 jobs would be created, with a number of these jobs employing local labor. The bottom line is more employment would result from implementing the Proposed Action versus the current grass and alfalfa land use. There has been a boost in local employment and economic activity from the permitting phase of this project as well. Local biologists, local civil engineers, and local geotechnical engineers have been involved in this project.

The comment also alleges the potential loss of agricultural water sources as a result of the Proposed Action. This allegation has no basis in fact. The Imperial Irrigation District holds the 2nd oldest water rights on the Colorado River, second only to the Palo Verde Irrigation District.

The comment's statement that the project will only generate \$36,000 to \$80,000 annual from the project is incorrect. That figure represents the range of gross fiscal benefits to the County of Imperial (i.e. tax revenue to the municipal corporation) found in the "Fiscal & Economic Impact Analysis Imperial Solar Energy Center South Imperial County" (April 2011) commissioned by the County and prepared by an expert economic research firm.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** *(continued)*

**Response to Comment 28:** *(cont'd.)*

For the sake of accuracy, the report states the net fiscal benefit is \$32,655 to \$74,432. As the title implies, in addition to the fiscal impacts to County government revenues, the report also analyzed the economic impact to the County's economy. It states that at 125 MW of generation at the site, not counting any economic benefits from the project's construction would create \$1,260,000 in earnings and \$2,005,000 in economic output each year compared to only \$392,000 in earnings and \$805,000 in economic output from agricultural use of the site.

adverse health effects that include cancer and other life and quality of life threatening conditions.

SDG&E actually gets points for projects / Power Purchase agreements that allegedly "benefit" low income minority communities such as ISECS and ISECW.

SDG&E's Power Purchase Agreement (PPA) Advice Letter to the PUC at page 11 includes the following:

"QUALITATIVE FACTORS (E.G., LOCATION, BENEFITS TO MINORITIES, ENVIRONMENTAL ISSUES, ETC.)

"As stated in the RFO, SDG&E differentiates offers of similar cost or may establish preferences for projects by reviewing, if applicable, qualitative factors including the following:

- a) Project viability
- b) Local reliability
- c) Benefits to low income or minority communities
- d) Resource diversity
- e) Environmental stewardship"

Despite claims by the applicant, SDG&E, BLM, DOE and others, and only after repeated challenges and questions from the public and Planning Commissioners, the Applicant admitted that the County will only receive about \$36,00-80,000 (annually) from the ISECS project.

The benefits to the local community are suspect at best, as are the claims of environmental stewardship and local reliability. The project generated energy will not even pass through the Imperial Irrigation District's system—so it cannot and will not provide energy or reliability to the most impacted low income community

Comment letters on the DEIR/EA from Connie Valenzuela, the Imperial County Agricultural Commissioner (Letter F: at RTC 22: 1-25-1), and Linsey Dale, the Imperial County Farm Bureau Executive Director, (Letter G at RTC 24: 1-25-11), and public comments from the Farm Bureau Director, expressed real concerns over the loss of ag related jobs, including indirect jobs, with an overall long-term loss of jobs related to the cumulative impacts of conversion of farmland to energy production. That concern was shared by other commenters and Commissioners.

Farm Bureau Director, Linsey Dale, also publicly informed the Planning Commissioners that Imperial Valley agriculture generates about 43,640 jobs, \$1.5 billion in income, with \$4.3 Billion total including indirect income. She said that works out to an average of 10 jobs per acre overall.

## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 29:

Concerns from Ms. Valenzuela and Ms. Dale were responded to in the Final EIR/EA Responses to Comments. Due to the limited employment created from the existing field crops, the project will create more jobs than there are currently at the site. Regardless of the opinions expressed by Ms. Valenzuela and Ms. Dale, the law permits the decision-makers to rely upon any substantial evidence in the record to support their conclusions about a project's impacts, even if there is a dispute among experts as to the impact. Therefore, the decision-makers are entitled to rely upon the results of the fiscal and economic impact report that contradicts the opinions of Ms. Valenzuela and Ms. Dale. Please also refer to Response to Comment 28.

### Response to Comment 30:

Ms. Dale presented general statistics at the Planning Commission hearing. She stated that there were approximately 43,640 agricultural related jobs in the County and approximately 400,000 acres of agriculture. The 10 jobs per acre figure was the result of a math error. She meant to say 0.1 jobs per acre on average for all types of crops. This analysis is general and would include more labor-intensive crops such as row crops, and fruit. The proposed Imperial Valley Solar Energy Center South project is proposed on grass crop fields which use less labor.

Furthermore, regardless of the opinions expressed by Ms. Valenzuela and Ms. Dale, the law permits the decision-makers to rely upon any substantial evidence in the record to support their conclusions about a project's impacts, even if there is a dispute among experts as to the impact. Therefore, the decision-makers are entitled to rely upon the results of the fiscal and economic impact report that contradicts the opinions of Ms. Valenzuela and Ms. Dale. Please also refer to Response to Comment 28.



Commissioner Gaddis stated that there will be a net loss of jobs regardless if any locals are hired during the construction process. We strongly agree with that statement and belief based on our own experiences.

Despite vague promises by the developers, that locals will get jobs—if they have the required skills and are union labor, evidence at other large scale projects indicates that specialized labor forces are brought in from out of the area to construct the projects and usually to operate and maintain them, too. There are absolutely no guarantees that locals will be hired. We could find no written confirmation, contract, or permit condition related to hiring a high percentage of local workers—or any percentage at all.

At the May 25th Imperial County Planning Commission meeting, Jerry Santillan, Deputy CEO for Imperial County, expressed his concern for the lack of long-term jobs that these large solar projects generate. He described visiting other large solar projects and saw “very few” jobs there.

Santillan went on to say that he disagreed with the applicants’ independent fiscal analysis but that they are working on mitigation, including a tax agreement related to any tax waivers allowed at the state and federal levels. On the conservative side, Santillan said the County may come out whole on the project rather than benefitting from the conversion of farm land for energy generation for distant cities.

**SDG&E’s Advice Letter to the PUC for the Power Purchase Agreement for ISECS** includes the following information on page 2 of 157 pages, many of which are significantly redacted: <http://www.sdge.com/tm2/pdf/2223-E.pdf>

- C. GENERAL PROJECT(S) DESCRIPTION
- PROJECT NAME CSolar IV South
- TECHNOLOGY Solar photovoltaic
- CAPACITY (MW) 97-130 MW
- CAPACITY FACTOR 24% average annual

“The Proposed Agreement provides for the purchase of the full output of as-available bundled energy and green attributes from the CSolar IV South Facility for a 25-year term. Deliveries to SDG&E will occur at the Imperial Valley Substation. Although the project is located within Imperial Irrigation District (“IID”), the generator interconnection is planned to connect directly with the ISO jurisdictional facilities at Imperial Valley Substation, so the project’s output will not require wheeling through IID’s transmission system. The project will be a Participating Generator in the CAISO.” (emphasis added)

At page 7 of SDG&E’s ISECS PPA advice letter:

**“WHY THE PROJECT DID NOT PARTICIPATE IN THE SOLICITATION AND WHY THE BENEFITS OF THE PROJECT CANNOT BE PROCURED THROUGH A SUBSEQUENT SOLICITATION.**

## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 31:

The project expects to generate approximately 300 construction jobs. The applicant anticipates half of these jobs will be sourced locally. The jobs will be sourced based upon the availability of the appropriately skilled labor.

In addition, regardless of the opinions expressed by Mr. Gaddis and Mr. Santillan, the law permits the decision-makers to rely upon any substantial evidence in the record to support their conclusions about a project’s impacts, even if there is a dispute among experts as to the impact. Therefore, the decision-makers are entitled to rely upon the results of the fiscal and economic impact report that contradicts the opinions of Mr. Gaddis and Mr. Santillan. See Response to Comment 28.

In addition, the comment’s and/or Mr. Santillan’s statement that the fiscal analysis is the applicant’s independent fiscal analysis is not correct. The County selected the economic research firm who prepared it for the Imperial County Planning Department as indicated on one of the report’s cover pages.

### Response to Comment 32:

Comment noted. The comment does not relate to an environmental impact.

The project’s transmission interconnection has capacity for 200 MW so the Final EIR/EA reflects the maximum capacity of power the site can generate. The EIR accurately reflects the environmental impacts associated with generation of up to 200 MW of solar power. The project currently has a Power Purchase Agreement for up to 130 MW with SDG&E.

CSolar IV South approached SDG&E with the proposed transaction in May of 2010. With the uncertainty surrounding when the 2010 RFO would be issued, it was decided to commence negotiations with CSolar IV South rather than require CSolar IV South to bid into the to-be-determined RFO. In order for the project to be eligible to apply for funding from United States Department of Energy (DOE) as part of its financing, the PPA negotiations had to be complete prior to the end of 2010. This PPA was negotiated bilaterally to avoid continuing the delay by waiting for the next SDG&E solicitation and was seen as a good opportunity to expand the already existing portfolio by up to 130 MW. The comparison and evaluation of the PPA's cost and value contained in Confidential Appendix D shows that this PPA compares favorably to offers received by SDG&E for the 2009 RFO's." (emphasis added)

Based on SDG&E's PPA information above, the project capacity is 97-130 not the 200MW listed in the FEIR/EA

**Lawrence Solomon: Don't count on constant electricity under renewable energy, says UK electricity CEO:**  
The Intermittent and unreliable nature of utility scale wind and solar projects:

<http://opinion.financialpost.com/2011/03/05/lawrence-solomon-don%27t-count-on-constant-electricity-under-renewable-energy-says-uk-electricity-ceo/>

As we previously stated in our DEIR/EA comments—that were erroneously rejected by Response to Comments – SDG&E is buying backup gas-fired generation to support their overpriced intermittent remote solar and wind energy projects, that require the equally expensive and destructive 500 kV Sunrise Powerlink / See the article below:

SEMPRA ENER NPV : SDG&E Proposes Adding 450 MW of Local "Peaking" Power

05/23/2011 | 01:35 pm

"SAN DIEGO, May 23, 2011 /PRNewswire/ — San Diego Gas & Electric (SDG&E) announced today that it has filed for regulatory approval of three new power-purchase contracts for a total of 450 megawatts (MW) of quick-start generation from peaker plants proposed for San Diego County. (Logo: <http://photos.prnewswire.com/prmh/20110106/MM264761.0GO>)

Peaker plants are small, efficient power units that can reach full generating capacity within 10 to 15 minutes to meet immediate demand on the grid.

5-26-11: ISEC South FEIR/EA comments from BAD/POC/ECCAC/Tisdale

Page 15

32  
Cont.

33

## RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)

### Response to Comment 33:

The proposed solar project is planned to deliver renewable energy to SDG&E. This will help the State meet its renewable energy objectives passed by the legislature California Assembly passed Senate Bill X1-2. The project does not have a gas fired back up component.

The comment presents the SDG&E's recent announcement to develop new peaking generation capacity. SDG&E is a large utility that makes business decisions independently from the developers of the Proposed Action. This independent business decision by SDG&E does not change recent research findings that solar facilities would tend to offset traditional generation facilities serving peak loads rather than baseline loads served by large fossil fuel plants. It is not the responsibility of BLM or Imperial County to explain SDG&E's long term management strategy or business decisions. It is likely that SDGE requires more generation of all types to meet increasing demands for energy.

Furthermore, the fact that SDG&E may need some peaker power plants to operate when solar or wind energy plants (or solar panels on homes and businesses) are not operating does not rule out that even more peaker power plants would be needed if there were no wind or solar power plants. Some level of redundancy is necessary in the grid. There is no contradiction between SDG&E's statements of its need for more peaker power plants compared to existing conditions and the statement that wind and solar projects reduce the need for even more peaker power plants.

The new plants - Pio Pico Energy Center, LLC (Apex Power Group); Quail Brush Generation Project (Cogentrix Energy, LLC); and Escondido Energy Center, LLC (Wellhead) - are the selected projects that met the specifications of SDG&E's 2009 solicitation for conventional generation.

*"SDG&E continues to sign contracts for as much renewable power as we can get to meet the state's 33-percent mandate, but we also need resources that can be brought online quickly to provide power when other sources, such as wind or solar plants, are not available," said James P. Avery, SDG&E's senior vice president of power supply. " (emphasis added)*

*"The output from most kinds of renewable generation fluctuates throughout the day, posing a challenge for our system operators who must balance supply and demand every few seconds to maintain reliability in the region," Avery added.*

*In addition to helping to integrate renewables with other generation sources, the new peaking units also will be called on when demand for power is highest, such as on a hot summer day..." (emphasis added)*

#### **Inadequate Response to comments:**

This list is incomplete due to a lack of adequate time to review and respond to this and so many other major actions / projects / documents / and related back-to-back deadlines that we are currently faced with.

**The Index of Comments on the DEIR & Responses, at RTC-ii,** only shows 6 letters while the Executive Summary (Es-15) lists 12 comment letters. The index also erroneously identifies the letter that is clearly identified as being from Backcountry Against Dumps, The Protect Our Communities Foundation and the East County Community Coalition, as being from Donna Tisdale as an *individual* commenter. These omissions and errors must be corrected in the Re-circulated and Supplemented EIR/EIS.

**B-1 page RTC-7:** This inadequate response regarding visual impacts does not address the new Soitec/Concentrix Concentrating PV tracking modulars that stand close to 20 feet tall and do have glare issues as evidenced by the Soitec photo found at this link

**E-2 response to the Farm Bureau letter at RTC-22:** This inadequate response identifies the "current use" as employing approximately two full time employees. Farm crops planted on the identified Prime Farmland and Farmland of Significant Importance can and does change according to the market, the owner and /or the lease holder of the farmland.

**L-14 at RTC-50:** The inaccurate response that the Tisdale description of the conversion from open farm land to "dense industrial park with lots of 60' to 140'tall poles and wires" as not being an accurate description was accompanied by the photo below "of a Blythe facility from 100 yards". See photo below. However, the second photo below, shows the a much reduced version of the reality of 34,600 Soitec/Concentrix CPV tracking units installed on the current

## **RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS, SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011 (continued)**

### **Response to Comment 34:**

Comment noted.

### **Response to Comment 35:**

Page RTC-41 (see Final EIR/EA Responses to Comments) shows the content of the letter from Ms. Tisdale on behalf of Back Country Against Dumps and the other organizations she represents.

### **Response to Comment 36:**

Response to Comment B-1 is accurate.

Please refer to Response to Comments 22 and 23 regarding glare.

### **Response to Comment 37:**

Response to Comment Letter F, as provided in the Responses to Comments, page RTC-22 is a response to the Agricultural Commissioner and not the Farm Bureau.

During the last five years the crops grown on the project land have been primarily grass (Bermuda, Alfalfa, Wheat, forage grass). At times the fields have been fallow. There was a corn crop in one year on one of the fields within the project site. Based on the consistency of the crops over the past five years, comment F-2 on Final EIR/EA Responses to Comments page RTC-22 is consistent.

In addition, the baseline for measuring impacts is generally the date of the NOP. The lead agency is not required to speculate about what other mixture of crops could be grown at the site. Regardless, Responses to Comments 28-31 identify that the decision-makers can rely upon any substantial evidence in the record to support its conclusions regarding project impacts. In this case, the County prepared an expert economic impact report that demonstrates the economic benefits of the project generating 125 MW far outweighs the economic benefits of its agricultural use.

### **Response to Comment 38:**

Response to Comment L-14 is accurate based on planned technology. Additionally, the farmer who is currently and has been farming the site for many years, stated at the Planning Commission public hearing that

he was confident that he would be able to farm the site again when the lease terminated.



**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 38:** (cont'd.)

This comment speculates that agricultural use cannot be restored, but the decision-makers are entitled to rely upon other expert opinion even if this comment expressed an expert opinion. The Department of Conservation, experts in the field of agriculture and agricultural conversion issues, recommended an agricultural restoration plan. Agricultural restoration plans are feasible.

open farmland. We also challenge the claim that the current high quality production value can or will be recovered after 30-40 years of industrial use, gravel, cement, spillages or other contamination sources related to the solar energy productions, the transformer fluids, waste fluids, etc.

The photo below was presented in RTC L-14 (at RTC-51) as representative of what the ISECS PV facility would look like. However, we have provided evidence to the contrary on the new 18' x 21' CPV tracking modules that must be addressed, analyzed, and re-circulated in a RFEIR/SEA of EIS.



L-32: at RTC 66: This RTC failed to respond to the issue raised regarding the two-day fire at SDG&E's Escondido substation built around 2005 with access to full and close-at-hand emergency services—unlike the Imperial County where the nearest fire station is in Calexico that is 8 miles away. Since these comments were submitted, SDG&E's own report attributed their substation fire to a malfunctioning transformer.

LS-35 at L-33: The response that additional backup generation will not be needed for this new and intermittent source of energy is negated by the May 23rd article announcing SDG&E's new Power Purchase Agreements for another 450 MW of new local "peaking power": <http://www.4-traders.com/SEMPRA-FNER-NPV-14471/news/SEMPRA-FNER-NPV-SDG-E-Proposes-Adding-450-MW-of-Local-Peaking-Power-13635761/>

L-36 at RTC 70 does not address our comment regarding the number of existing and proposed high voltage lines and projects that will all connect at the same Imperial Valley Substation which

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**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 39:**

The photo presented is of a facility similar to the pv option, which the applicant is strongly considering for this site. Page 2-8 of the Final EIR/EA depicts a facility similar to the CPV option. Regardless of which option is ultimately selected, the Final EIR/EA properly analyzed the impacts of both options and properly concluded the visual impacts were not significant. Please also refer to Response to Comment 19.

**Response to Comment 40:**

Response to Comment L-32 (see Final EIR/EA Responses to Comments) addresses project fire protection. In addition, the project will pay fire service fees to the County and contribute to additional firefighting equipment.

**Response to Comment 41:**

Please refer to Response to Comment 33.

**Response to Comment 42:**

SDG&E manages the Imperial Valley Substation, under direction from the CAISO. Response to Comment L-36 (see Final EIR/EA Responses to Comments) describes the processes of the CAISO who manages the transmission network in California to ensure its reliability, including how to ensure reliability when a substation is off-line, whatever the reason for it being off-line. This project will comply with CAISO requirements. More information about CAISO's Mission can be found at <http://www.caiso.com>

represents a reliability issue in the event of a natural disaster or catastrophic failure at the Substation itself.

**L-37 at RTC 70** inaccurately states that the project site is "vacant land".

**L-38 at RTC 70** misses the point in the related comment that these large-scale industrial energy projects generally import their specialized labor forces to construct, operate and maintain their facilities—as is the case at the referenced projects. The license plates on the vehicles Sunrise Powerlink contractors, Parr Electric and others, show that vast majority of workers are from out-of-state. The Imperial Valley Solar Energy Center South will likely be no different, as noted by a comment from Planning Commission Gaddis—that most big jobs in the Valley use imported unionized labor.

Compliance and enforcement of mitigation measures for this and cumulative projects will require additional staffing at both BLM and related Imperial County agencies. Adequate funding for these related and necessary staffing increases must be provided as part of any project or CUP approvals

**Table 5-2 Cumulative Impact Projects (5-11)** does not fully nor clearly identify or tally the total impacts to agriculture land or the proposed conversion of prime farmland of state wide significance—in violation of the Farmland Protection Policy Act

See farmland conversion table at 3.9-6 /Affected Env /Ag resources showing only 9,412 acres of Prime, state wide significant/ unique/ local important farm land NOW MUCH MORE will be converted on a huge scale.

**Mitigation Implementation, Compliance, and / or Enforcement are of  
major concern based on numerous past and current actions by  
Imperial County and/or its representatives**

Imperial County's track record is alarming in regards to implementing their own rules, regulations, policies, ordinances, CEQA, and/or enforcing mitigation requirements as evidenced by the following examples:

- **US Gypsum Expansion Project:** Imperial County issued a Negative Declaration allowing US Gypsum to double production to 1 billion sq feet of wall board, increase its use of Ocotillo well water from about 400 acre feet (AF) to 767 AF per year, and to increase their quarry operations (26 miles from the plant) by 70% to 800,000 tons.
- **Imperial Valley Solar / Solar Two:** Despite well-documented verbal and written testimony regarding the adverse impacts, the County Planning Director at the time, Jurg Huberger (now reportedly consulting/lobbying for solar energy companies), approved a permit for the temporary / permanent export of scarce desert groundwater from a low-income community of Ocotillo, where US Gypsum exports their water from, within the federally designated Ocotillo/Coyote Wells Sole Source Aquifer, to serve the 6,500 acre

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** *(continued)*

**Response to Comment 43:**

Comment noted. The project site is not vacant, desert land. Rather, the project site consists of disturbed agricultural land.

**Response to Comment 44:**

The project expects to generate approximately 300 construction jobs. The applicant anticipates half of these jobs will be sourced locally. The jobs will be sourced based upon the availability of the appropriately skilled labor. The fact that some license plates on vehicles for the Sunrise Powerlink are from out-of-state is consistent with the fact that workers with some skills are needed from out of state and workers with some skills available in Imperial County are also needed to construct energy projects. Neither this comment nor Mr. Gaddis have provided substantial evidence in support of their statements.

The degree to which a project uses local versus out-of-state labor is a social, economic, and political impact issue, not an environmental impact issue.

The comment suggests that additional agency staff will be needed to carry out compliance and enforcement activities. The full cost of compliance monitoring associated with all phases of project construction, including mitigation implementation, is funded by the project developer, not the BLM or Imperial County. The agencies have the option of using current staff, independently contracted staff or hiring additional staff on a temporary or permanent basis. In fact, the BLM is carrying out compliance monitoring on other solar projects using contract services.

**Response to Comment 45:**

In accordance with CEQA, the Final EIR/EA makes a good faith effort to disclose the existing condition, the project impacts, and the cumulative impacts of the project along with past, present and reasonably foreseeable future projects on agricultural resources as of the time the NOP was published.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 45:** (cont'd.)

Final EIR/EA Table 3.9-2 states that the net change from 2006 to 2008 in Important Farmland in the County was a decrease of 2,202 acres out of 543,138 acres. This comment states that 9,412 acres were converted, but this is not correct. 9,412 acres were changed during this period, but this does not mean 9,412 acres were lost. 5,807 acres were lost and 3,605 acres were gained resulting in a net loss of 2,202 acres out of 543,138 acres. Although the comment may prefer a different methodology for calculating agricultural conversion, the lead agency believes the net changes are a better methodology and rejects the comment's suggestion that a 2,202 acre loss in Important Farmland should really be characterized as a 9,412 acre loss to be added to the cumulative impacts analysis.

Regardless, historical data from the Imperial County Agricultural Commissioner provides historical information on acres of agricultural production. (<http://imperialcounty.net/ag/Departments/clereports.htm>). This data shows that the number of acres of field and seed crop production has remained relatively constant over the past 20 years, varying from 408,000 to 483,000 acres. Section 5.1.2.4 tallies approximately 10,089 acres of agricultural land in the County that is foreseeable for solar and other development based on the list methodology for evaluating cumulative impacts. This equates to approximately 1.8% of County wide important farm land.

To the extent the comment is undisclosed methodology would identify a different level of cumulative impacts, the lead agency cannot speculate what it would be based upon the two sentence comment provided. Regardless, the lead agency's list methodology complies with CEQA and is backed by substantial evidence. The lead agency is entitled to rely on its methodology even if other methodologies are also available.

It is worth repeating that the Proposed Action does not permanently convert agricultural lands because it is required to implement an agricultural restoration plan.



**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 45:** (cont'd.)

Furthermore, the temporary conversion of the agricultural lands is well within the historic levels of natural fallowing of agricultural land in the County. This contributes to the lead agency's conclusion that the Proposed Action is not making a cumulatively considerable impact on agricultural resources. See Final EIR/EA Section 2.1.3.12 and F-4 to 4-6.

For all the reasons discussed in Response to Comments 9 to 15, the Proposed Action does not violate the Farmland Protection Policy Act.

**Response to Comment 46:**

Comment noted. The comment expressed dissatisfaction with merits of past land use decision issued by Imperial County. As the government agency with jurisdiction over local land use decisions in Imperial County, the County is required to process applications it receives in accordance with its understanding of the law and facts applicable to each application.

The purpose of this environmental analysis is to present a good faith analysis of the impacts of the Proposed Action and to inform and involve the public in the process in accordance with County rules, CEQA, NEPA and other rules and regulations.

for-profit commercial industrial Imperial Valley Solar & hydrogen generation project. The impacted aquifer that has already been identified as being in a state of overdraft with little to no recharge. BLM and the CEC also approved this project and the virtual theft of a vanishing desert community water resource. The CEC actually commented, in writing, that the County did not comply with or implement their own land use zoning, ordinances, or regulations, before they issued "overriding considerations" to approve the project went belly up almost immediately after approval of the ROD.

- **Wind Zero:** The County approved an approximately 1,000 acre military training, race track, resort, complex facility adjacent to residential areas with a permit to pump an excessive amount of groundwater from the same Ocotillo /Coyote Wells Sole Source Aquifer that has already been documented to be in a state of overdraft.

These examples / claims are supported by the following rulings and complaints that are incorporated in full by reference:

- 10-26-2000: *Sierra Club v Imperial County* . US Gypsum :: Appellate Court ruled that the County had abused its discretion in certifying the negative declaration and required that an EIR be prepared
- 5-3-2011: *Sierra Club v Imperial County*, US Gypsum DO56919: Appellate Court ruled
- 1-25-11: *Sierra Club & Desert Protective Council v Imperial County / Imperial County Board of Supervisors/Wind Zero Group, Inc. & Wind Zero Ranges LLC* : ECU06232 AND RELATED CASE CEU06233: 1-26-11: *Quechan Tribe of Fort Yuma v Imperial County /Imperial County Board of Supervisors / Wind Zero Inc, Wind Zero Ranges LLC*: Verified Complaint for Petition for Writ of Mandate and Complaint for Declaratory Relief:
- Imperial Valley Solar litigation /Court Injunction
- Wind Zero: 2 related Complaints have been filed against Imperial County approvals.

**THE HEALTH AND SAFETY SECTION DOES NOT ADDRESS EMF EXPOSURE, OR  
RADIO FREQUENCY RADIATION (RFR) FOR WORKER SAFETY IN AREAS :**

- **Stray Voltage / Dirty Energy:** This FEIR/EA does not address EMF or Radio Frequency Radiation exposure and adverse impacts to construction, operation and /or maintenance workers at the proposed solar project. They will be exposed to high frequency voltage transients. Exposure is increased with the number of PV units, switches, transformers, inverters, and power lines.
- **EMF and Radio Frequency Radiation** may also pose a problem to any adjacent livestock operations or extended grazing. Research, conversations with the owner of Bull Frog Farm Dairy and others, including those who make a living testing for stray voltage at dairy's, horse breeding facilities, and near industrial wind turbine projects and connected substations, confirm that adverse health impacts can and do result from exposure to these sources and frequencies. Some people have had to leave their homes, businesses, and/or jobs.

**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 47:**

Regardless of past court rulings some of which are decided in favor of the County and some of which are decided against the County of which the comment notes a few of the latter, as the government agency with jurisdiction over local land use decisions in Imperial County, the County is required to process applications it receives in accordance with its understanding of the law and facts applicable to each application.

The purpose of this environmental analysis is to present a good faith analysis of the impacts of the Proposed Action and to inform and involve the public in the process in accordance with County rules, CEQA, NEPA and other rules and regulations

**Response to Comment 48:**

Contrary to the comment's certainty that there are significant health impacts from EMF, in a recent CPUC issued Decision D.06-01-042, The CPUC stated "at this time we are unable to determine whether there is a significant scientifically verifiable relationship between EMF exposure and negative health consequences." Reports from major research centers in other countries have come to similar conclusions that there is no compelling evidence of any health hazard from power lines and that if power lines do have any effect on human health, it is small.

Pursuant to CEQA Guidelines 15145 "If, after a thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the lead agency should note its conclusion and terminate discussion of the impact." Because there are no conclusive studies on EMF impacts it is too speculative to evaluate. Furthermore, proposed transmission facilities are not located in proximity to areas that are highly habitable (e.g. residential areas), therefore, there would not be a large population exposed to such effects.

- Increased and cumulative EMF and RFR exposure to local impacted residents and others, including livestock and wildlife, exposed to the increasing stray voltage, dirty electricity, electrical generation, transformation and transmission, represent a potentially significant cumulative and adverse impact that must be analyzed and addressed in a re-circulated FEIR/SEA or new EIS.

The books *Dirty Electricity (Electrification and the Diseases of Civilization)* by Samuel Milham, MD, MPH (iUniverse 7/9/10) and *the Body Electric* by Robert O Becker, MD, and Gary Selden (Morrow 1985) are hereby incorporated by reference in order to get this issue into the record, into the courts, and into the court of public opinion, to raise awareness regarding this hidden and politically suppressed health issue of major concern and controversy.

**Alternatives:**

The linked San Diego Smart Energy 2020 plan demonstrates how a combination of various renewable energy options, including combined heat and power, solar panels on rooftops, parking shade structures and small brownfields near existing substations, and gas-fired peaker plant negates the alleged need to build expensive and damaging industrial scale remote wind and solar projects and the extensive and expensive new and upgraded transmission extensions that they rely on. We believe this, now updated, report helped to convince the PUC's Assigned Administrative Law Judge who denied the CPCN for the Sunrise Powerlink before the political appointees, biased towards the utility industry, ignored the ALJ's decision, based on the law and the testimony, and approved the project: [http://www.etechninternational.org/new\\_pdfs/smartenergy/52008\\_SmE2020\\_2nd.pdf](http://www.etechninternational.org/new_pdfs/smartenergy/52008_SmE2020_2nd.pdf)

**More Than 160 Microgrid Projects Are Currently Active  
around the World, Says Pike Research**

Posted May 24, 2011

**More Than 160 Microgrid Projects Are Currently Active around the World, Says Pike Research**

BOULDER, Colo.--(BUSINESS WIRE)--Microgrids are an important emerging mechanism for incorporating distributed energy generation, both from renewable as well as fossil fuel power sources, into the larger electrical distribution system. Such microgrids may either be operated in conjunction with, or "islanded" from, the utility power grid and are utilized in a variety of settings including commercial applications, community/utility deployments, institutional power systems, military installations, and off-grid microgrids that provide electricity to remote villages and other sites. According to a new tracker report from Pike Research, more than 160 microgrid projects are currently active around the world, with power generation capacity totaling more than 1.2 gigawatts (GW).

"This will not be the case for long, however. The year 2010 signaled a shift as some of the first commercial-scale microgrid projects reached significant milestones. With the expected adoption of

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**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Response to Comment 49:**

Comment noted. The comment suggests that the San Diego Smart Energy 2020 Plan that includes distributed solar energy production and Microgrid Projects negate the need to build commercial scale renewable energy generation facilities. However, current research indicates that development of both distributed generation and utility-scale solar power will be needed to meet future energy needs in the United States, along with other energy resources and energy efficiency technologies (NREL 2010). For a variety of reasons (e.g., upper limits on integrating distributed generation into the electric grid, cost, lack of electricity storage in most systems, and continued dependency of buildings on grid-supplied power), distributed solar energy generation alone cannot meet the goals for renewable energy development. Ultimately, both utility-scale and distributed generation solar power will need to be deployed at increased levels, and the highest penetration of solar power overall will require a combination of both types (NREL 2010).

Furthermore, the San Diego Smart Energy 2020 Plan does not respond to the BLM's purpose and need for agency action in the Imperial Solar Energy Center South Final EIR/EA. The applicable federal orders and mandates providing the drivers for specific actions being evaluated in the Final EIR/EA compel the BLM to evaluate utility-scale solar energy development. The Energy Policy Act of 2005 (Public Law [P.L.] 109-58) requires the Secretary of the Interior to seek to approve non-hydropower renewable energy projects on public lands with a generation capacity of at least 10,000 MW of electricity by 2015; this level of renewable energy generation cannot be achieved on that timetable through distributed generation systems. While the Imperial Solar Energy Center South itself would not be sited on public lands, BLM's action on the ROW across public land would facilitate large-scale solar energy development, in accordance with Secretarial Order 3285A1 (Secretary of the Interior 2010). Accordingly, the BLM's purpose and need for agency action in this Final EIR/EA is focused on the siting and management of utility-scale solar energy development on public lands.

the IEEE islanding standards in 2011, the shift from pilot validation projects to fully commercial projects will only accelerate."

"Up to this point, the majority of microgrids have been pilot projects and/or research-related experiments," says senior analyst Peter Asmus. "This will not be the case for long, however. The year 2010 signaled a shift as some of the first commercial-scale microgrid projects reached significant milestones. With the expected adoption of the IEEE islanding standards in 2011, the shift from pilot validation projects to fully commercial projects will only accelerate."

Asmus adds that North America remains the leading region for microgrid deployments. Read more: [More Than 160 Microgrid Projects Are Currently Active around the World, Says Pike Research - FierceEnergy](http://www.fierceenergy.com/press-releases/more-160-microgrid-projects-are-currently-active-around-world-says-pike-res#ixzz1NTgGAMKt) <http://www.fierceenergy.com/press-releases/more-160-microgrid-projects-are-currently-active-around-world-says-pike-res#ixzz1NTgGAMKt>

Remote, utility-scale solar cannot provide baseload power, like gas or geothermal, only peak power. Further, there is no plan or requirement that these plants offset existing fossil-fuel energy sources, such as coal plants; they may add to power generation, but there will be no concomitant shutdown of dirty generators.

If a rapid transition to renewable energy is the real future, and at a cost of trillions of dollars, instead of these massive projects that lay waste to a growing expanse of prime farmland, rangeland and public land, each one of these new Concentrating Solar Modules, or a small group can be distributed at local high-energy use locations, or thin film PV panels covering large roofs and parking structures that can serve a dual purpose of generating energy and keeping vehicles cool in the summer heat. Farmers are doing this at almond processing facilities in the Central Valley with modules from SolFocus, the same units that SDG&E will reportedly use for their Sol Orchards. While still expensive, at least we are not giving up food and fiber production and the related jobs and businesses that go with that agricultural production—or tens of thousands of acres of public land and recreation access.

**Conclusion:**

**The State of California is currently working on protecting important agriculture lands from unnecessary conversion. Renewable energy projects will be directed to locations with less desirable and important production value. Approval of the ISECS project would fly in the face of new and longstanding protections.**

There is remaining controversy related to the unnecessary conversion of productive Prime farmland and agriculture land, including land identified as Prime farmland and Farmland of Significance into high density, glare producing, view blocking industrial-scale energy facilities for 20-40 years. These are long-term conversions – not temporary uses – that are likely irreversible, rendering these lands not fit to farm or so degraded that they are only fit for further industrial uses.

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**RESPONSE TO COMMENT LETTER FROM BACKCOUNTRY AGAINST DUMPS,  
SIGNED BY DONNA TISDALE, PRESIDENT, DATED MAY 26, 2011** (continued)

**Responses to Comments 50 through 60:**

Conclusion section of the letter re-states the comments raised throughout the letter. Please refer to Responses to Comments 1 through 49.

The BLM's EA and the County's EIR and proposed CUP and variance serve as a precedent for many other solar / energy / transmission projects that are currently pending or in the works.

51

This project and cumulative projects in the same immediate area, and across the Imperial Valley, has great potential to contribute to cumulative significant adverse impacts/ effects related to loss of farmland and related jobs and businesses, to visual resources, light and glare from taller and more reflective CVP tracking units

52

Unique characteristics of Imperial Valley include the availability of water and ability to farm year round. Cumulative impacts from Conversion of farmland in this unique area will serve to exacerbate the average annual loss of productive farmland to development overall.

53

Precedent setting increase in allowed height for transmission towers that could lead to unidentified and unintended adverse impacts on the operation and safety of aerial spraying of crops.

54

Conversion of farmland may not be reversible, as so rosilly alleged in the FEIR/EA. It is highly likely that, after 30-40 years (the life of the lease), the irrigation water resources that previously went with the land, will have long been diverted to distant cities under political duress.

55

The damage to the soil and land will likely be irreversible. Cumulative impacts to the ongoing state and nation wide loss of productive and prime farmland of statewide significance was not fully disclosed or properly analyzed

56

Cumulative adverse and significant impacts from increased height of transmission lines and the introduction of approximately 34,600 new tracking CPV units /glare sources to operations and safety of aerial spraying operations, Homeland Security low flying surveillance and/or military routes of travel in the area and training and operations at NAF El Centro .

57

These are fast moving and alarming times we are living in. We fear that the headlong rush to green energy—at any cost— will come at a very high price economically , environmentally and socially.

58

Science-based decisions, common sense, and common decency all seem to have been lost in this politically driven agenda. Sadly, as usual, it is the underserved and underrepresented that will bear the brunt, the weight, and the loss of these politically forced changes.

59

Our apologies for the slight delay in submitting these comments. There are simply too many projects being forced through in too short a time for the average citizen / volunteer groups to fully grasp, research and respond in a coherent and timely manner. Repeated computer crashes don't help either. Please contact me with any questions: [tisdale.donna@gmail.com](mailto:tisdale.donna@gmail.com)

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Sincerely,

Donna Tisdale, BAD President, POC Secretary, ECCAC member /



**MEMORANDUM OF AGREEMENT  
AMONG THE  
BUREAU OF LAND MANAGEMENT-CALIFORNIA,  
THE UNITED STATES ARMY CORPS OF ENGINEERS,  
THE DEPARTMENT OF ENERGY,  
CSOLAR DEVELOPMENT, LLC,  
AND THE CALIFORNIA STATE HISTORIC PRESERVATION OFFICER,  
REGARDING  
THE IMPERIAL SOLAR ENERGY CENTER SOUTH PROJECT  
IMPERIAL COUNTY, CALIFORNIA**

**WHEREAS**, CSOLAR Development, LLC (Applicant) has applied for a right-of-way (ROW) grant on public lands managed by the Bureau of Land Management (BLM) and has submitted a Plan of Development (POD) to construct, operate and maintain a solar energy electrical generating plant on non-Federal lands and a transmission line across Federal lands, including construction of photovoltaic solar energy panels, a 230 kilovolt (kV) transmission line, access and maintenance roads, laydown and staging areas, and support facilities and infrastructure (hereinafter, the “Project”); and

**WHEREAS**, the BLM has determined that the issuance of a ROW (proposed Federal Action) to the Applicant in accordance with the Federal Land Policy and Management Act (FLPMA) (Public Law 940-579; 43 U.S.C 1701), and authorization of the Project is an undertaking subject to Section 106 of the National Historic Preservation Act (NHPA), 16 USC 470(f), and its implementing regulations under 36 C.F.R. Part 800 (2004) (Section 106); and

**WHEREAS** the U.S. Department of Energy (DOE) may also have Section 106 responsibilities since it may issue a loan guarantee (proposed Federal action) for the undertaking under Title XVII of Energy Policy Act of 2005 as amended by Section 406 of the American Recovery and Reinvestment Act of 2009 and therefore has participated in this consultation and is an Invited Signatory to this Memorandum of Agreement (Agreement); and

**WHEREAS**, the United States Army Corps of Engineers (COE) may also have Section 106 responsibilities since it may issue a Department of the Army (DA) permit pursuant to Section 404 of the Clean Water Act (proposed Federal action) for discharges of dredged or fill material into jurisdictional waters of the United States associated with the undertaking, and therefore has participated in this consultation and is an Invited Signatory to this Agreement; and

**WHEREAS**, the BLM is the lead Federal agency for this undertaking for the purpose of complying with Section 106 on behalf of itself, the COE and the DOE, and the BLM shall be responsible for managing historic properties within the area of potential effects (APE) for the undertaking pursuant to the NHPA; and

**WHEREAS**, by Secretarial Order No. 3285 issued March 11, 2009, the Secretary stated as policy that encouraging the production, development, and delivery of renewable energy is one of the Department of Interior’s (DOI) highest priorities and that agencies and bureaus within the

DOI will work collaboratively with each other, and with other federal agencies, departments, states, local communities, and private landowners to encourage the timely and responsible development of renewable energy and associated transmission while protecting and enhancing the Nation's water, wildlife, and other natural resources; and

**WHEREAS**, the BLM has authorized the Applicant to conduct specific identification efforts for this undertaking including a review of the existing literature and records, cultural resources surveys, ethnographic studies, and geo-morphological studies to identify historic properties that might be located within the APE; and

**WHEREAS**, the reports (*Final Class III Cultural Resources Survey for the Imperial Solar Energy Center South Project, Imperial County, California*, prepared by RECON Environmental, October 2010, and; *Draft Enhanced Inventory Investigation at IMP-3971 and near IMP-4485/4495 – Addendum 3 to Class III Cultural Resources Survey for the Imperial Solar Energy Center South Project*, prepared by RECON Environmental, February 2011, and; *Draft Inventory, Evaluation and Analysis of Effects on Historic Built Environment Properties within the Area of Potential Effect of the Imperial South Energy Center, South Imperial County, California*, prepared by ASM Affiliates, Carlsbad, CA, April 2011.) presents the results of identification efforts; and

**WHEREAS**, the BLM has identified 19 archaeological sites within the APE which are described in Appendix D to this Agreement, and the sites designated CA-IMP-3999, CA-IMP-4485/4495 and CA-IMP-4962 have been determined eligible for inclusion on the National Register of Historic Places (NRHP) in consultation with California State Historic Preservation Officer (SHPO), site CA-IMP-7875 has been determined not eligible for inclusion on the NRHP in consultation with SHPO, and all other sites are unevaluated but will be treated as eligible for inclusion on the NRHP for project management purposes; and

**WHEREAS**, all eligible sites and sites treated as eligible for inclusion on the NRHP, with the exception of the archaeological site designated CA-IMP-3999, will be avoided through project design and the implementation of management or protection measures; and

**WHEREAS**, the BLM continues to seek and analyze alternatives to avoid effects to historic properties but has determined that alternatives are under consideration that would have an adverse effect on archaeological site designated CA-IMP-3999 which is eligible for inclusion on the NRHP and has consulted with the SHPO pursuant to 36 C.F.R. Part 800.6 of the regulations implementing Section 106 of the NHPA; and

**WHEREAS**, in accordance with the regulations at 36 C.F.R. 800.6(a)(1) BLM has notified the Advisory Council on Historic Preservation (ACHP) regarding the effects of alternatives of the undertaking on Historic Properties and has invited them to participate in consultation to resolve the potential effects on Historic Properties, and as per their letter dated February 11, 2011, the ACHP has declined to participate (see 36 C.F.R. 800.6(b)(1), "Resolution without the Council); and

**WHEREAS**, the Applicant has participated in this consultation per 36 C.F.R. 800.2(c)(4) and, will be the entity to whom the BLM may grant a ROW and the COE and DOE may issue permits or loan guarantees for the undertaking, and has the responsibility for carrying out the specific terms of this Agreement under the oversight of the BLM, and is an Invited Signatory to this Agreement; and

**WHEREAS**, Imperial County has participated in consultation on the undertaking and is invited to concur in this Agreement; and

**WHEREAS**, pursuant to 36 C.F.R. 800.2(c)(2)(ii) and Executive Order 13175, the BLM is responsible for government-to-government consultation with federally recognized Indian tribes and is the lead federal agency for all tribal consultation and coordination; and

**WHEREAS**, the BLM has formally notified and invited Federally recognized tribes including the Barona Band of Diegueno Indians, Campo Band of Mission Indians, Cocopah Indian Tribe, Fort Yuma Quechan Tribe, Ewiiapaayp Band of Kumeyaay Indians, Jamul Indian Village, La Posta Band of Kumeyaay Indians, Manzanita Band of Kumeyaay Indians, Mesa Grande Band of Mission Indians, San Pasqual Band of Diegueno Indians, Santa Ysabel Band of Diegueno Indians (Tribes), Sycuan Band of Kumeyaay Nation, Torres-Martinez Desert Cahuilla Indians and Viejas Band of Kumeyaay Indians , and the non Federally recognized tribe of the Kwaaymii Laguna Band of Indians (Tribal Organization) to consult on this undertaking and participate in this Agreement as a Concurring Party; and

**WHEREAS**, the BLM shall continue to consult with the Tribes throughout the implementation of this Agreement regarding effects to historic properties to which they attach religious and cultural significance. BLM will carry out its responsibilities to consult with Tribes that request such consultation with the further understanding that, notwithstanding any decision by these Tribes to decline concurrence, BLM shall continue to consult with these Tribes throughout the implementation of this Agreement; and

**NOW, THEREFORE**, the BLM and SHPO, (hereinafter “Signatories), the COE, DOE, and the Applicant (hereinafter “Invited Signatories”), agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties, resolve such adverse effects through the process set forth in this Agreement, and provide the ACHP with a reasonable opportunity to comment in compliance with Section 106.



## **STIPULATIONS**

The BLM shall ensure that the following measures are implemented:

### **I. DEFINITIONS**

- a) The definitions found at 36 C.F.R. 800.16 and in Appendix A shall apply throughout this Agreement.

### **II. AREA OF POTENTIAL EFFECTS**

- a) The area of potential effects (APE) for the undertaking is depicted in Appendix B to this Agreement. Appendix B as set forth hereunder may be modified through consultation among the parties to this Agreement without amending the Agreement. The APE, as currently defined, encompasses an area sufficient to accommodate all of the proposed and alternative project components under consideration as of the date of the execution of this Agreement. If it is determined in the future that the undertaking may directly or indirectly affect historic properties located outside the currently defined APE, then the BLM, in consultation with the SHPO and pursuant to 36 C.F.R. 800.4(a)(1), shall determine and document modifications to the APE using the following process:
  - i) Any party to this Agreement may propose that the APE established herein be modified. The BLM shall notify the parties of the proposal and consult for no more than 30 days on the proposal to modify the APE.
  - ii) After considering the views and comments of the consulting parties, and in consultation with SHPO, the BLM will determine and document any modifications to the APE. The BLM will prepare a description and a map of the modification to the APE. The BLM will keep copies of the description and the map on file for its administrative record and distribute copies of each to the other parties to this Agreement within 30 days after modifying the APE.
- b) Where modification to the APE adds a new geographic area, the BLM shall take the steps necessary to identify and evaluate historic properties in the new geographic area, assess the effects of the undertaking on any historic properties in the new geographic area, and provide for the resolution of any adverse effects to such properties in consultation with the parties to this Agreement, Indian tribes, or other parties that request consultation.

### **III. AVOIDANCE, PROTECTIVE MEASURES AND TREATMENT PLANS**

- a) The BLM will continue to seek and analyze alternatives that avoid adverse effects to cultural resources.
  - i. For the alternatives under consideration and for the cultural resources described in Table 1 of Appendix D, where cultural resources can be avoided, the BLM will implement the management or protective measures identified in Table 1 of Appendix

D and the following:

- (1) Archaeological sites that can be protected from direct impacts, but are within 50 feet, including buffer areas, of proposed construction activities will be identified and labeled as Environmentally Sensitive Areas (ESAs). This includes archaeological sites determined eligible for inclusion in the NRHP and sites that have not been formally evaluated, but are being treated as eligible and avoided for project management purposes.
  - (2) The ESAs will be designated by marking the boundaries of sites with appropriate buffer zones (generally a buffer of 20 feet beyond the outer limits of the site extent, as demonstrated by surface and/or subsurface indications) using temporary fencing or other easily recognizable boundary defining materials.
    - (a) These areas will be shown on the engineering plans for the project as off-limits to construction activities.
    - (b) Once established, an ESA will define areas where construction can occur while preventing construction activities and damage to archaeological resources within the designated ESA.
  - (3) ESAs will be identified and established by a qualified archaeologist prior to initiation of ground disturbing activities and will be maintained for the duration of the work effort in the ESA vicinity.
- b) Should BLM approve an alternative that adversely affects archaeological site CA-IMP-3999, the BLM shall mitigate the adverse effect as follows:
- i. The BLM shall ensure that the adverse effect of the undertaking on archaeological site CA-IMP-3999 is resolved by implementing and completing the historic properties treatment plan (HPTP) referred to as *Research Design for Archaeological Data Recovery at Prehistoric Site CA-IMP-3999, Imperial County, California (Draft)*, prepared by ASM Affiliates, January 2011, which is Appendix C to this Agreement. Due to the property's scientific or information value as defined in Criterion D of 36 C.F.R. 63, the qualifying criteria for inclusion on the NRHP, data recovery, scientific study and observation is the appropriate treatment for the archaeological values at CA-IMP-3999 as outlined in the HPTP. Amendment of the HPTP will not require amendment of this Agreement.
  - ii. The HPTP may include provisions for public interpretation including, but not limited to, publications, professional papers, and museum exhibitions.
  - iii. The HPTP may be augmented or amended to include additional provisions for alternative mitigation or treatment to which the parties to this Agreement may agree are appropriate and reasonable.
  - iv. The HPTP may include procedures for managing discoveries and unanticipated effects consistent with Stipulation V and Appendix E.
  - v. If the HPTP has not been finalized by the date of execution of this Agreement, the

BLM shall continue consultation on the HPTP. If the HPTP has not been finalized by the date of the Decision Record, the BLM may submit the HPTP to the consulting parties for a 30-day review period. A consulting party may provide its comments directly to the SHPO with a copy to the BLM within the 30-day comment period. BLM will consider timely comments when finalizing the HPTP. The BLM will forward to the SHPO all comments regarding the HPTP received during the comment period.

- (1) The BLM will provide the consulting parties with written documentation indicating whether and how the draft HPTP will be modified in response to any timely comments received. If the HPTP is revised in response to comments received within the 30 day period, BLM shall submit the revised HPTP to all parties for a final, 15 day review period. BLM will consider any timely comments in finalizing the HPTP and provide the consulting parties with a copy.
- vi. Should the undertaking be approved by the BLM, the HPTP will be implemented after the ROW is granted and issuance of any DA permit by the COE, and prior to the issuance of a Notice to Proceed for construction in those portions of the undertaking addressed by the HPTP.

#### **IV. MONITORING**

- a) Qualified archaeologist(s) will be on site during construction to observe grading, trenching or other excavation for any facilities, roads or other project components related to the undertaking near ESAs and in other areas determined appropriate for full-time monitoring, as detailed in Stipulation 3, an HPTP prepared pursuant to this Agreement, and Appendix D.
  - i. Archaeological monitors will be qualified archaeologists who are familiar with the types of historic and prehistoric archaeological resources that may occur in the APE and will be directly supervised by a principal archaeologist (PA). The principal archaeological monitor will be approved by the BLM prior to construction.
  - ii. Documentation of archaeological monitoring activities will be submitted weekly by the PA to the BLM by email. Documentation will include the location of archaeological monitoring activities for the reporting time period, as well as a description of any archaeological resources identified and appropriate actions taken. The PA will prepare a monthly field monitoring verification report with the compiled monitoring observations, results, and actions taken for submission and approval to the BLM.
    - (1) At the request of consulting parties or Indian tribes, the PA will provide copies of weekly and monthly archaeological monitoring reports.
- b) To facilitate continued tribal consultation for this undertaking, in consultation with Indian tribes and the BLM, the Applicant has agreed to develop and implement a tribal

monitoring program to afford representatives designated by Indian tribes (tribal monitoring consultants) the opportunity to monitor and be on site during construction to observe grading, trenching or other excavation for facilities, roads or other project components related to the undertaking near ESAs and in other areas determined appropriate for monitoring, as detailed in HPTP(s) and Appendix D.

- i. The tribal monitoring program will describe the role of all parties in the program, specify the terms, expectations, notifications, reports, training, or deliverables to be provided, and include a specific procedure to be followed in the event that a tribal monitoring consultant is not provided or is not available.
  - (1) Tribal monitoring consultants will be individuals designated by the Tribal parties to this Agreement and will report to the PA.
- ii. Documentation of tribal monitoring activities will be submitted to the Tribes and the BLM in accordance with the terms of the tribal monitoring program.
- c) Upon completion of all monitoring tasks and requirements implemented pursuant to this Agreement, the PA will submit a final monitoring report to the BLM for review and approval describing the monitoring program and the findings and results, and presenting a detailed professional description, analysis, and evaluation of any cultural resources that were encountered and evaluated during construction.
  - i. The BLM will provide a copy of the final monitoring report to the parties to this Agreement who so request.
- d) The Applicant, in consultation with the parties to this Agreement, shall establish a Long Term Management Plan (LTMP) for the post-construction monitoring and condition assessment of sites in the APE which could be subject to project operations and maintenance activities.
  - i. The Applicant shall submit a draft LTMP to the BLM within six months from the date of the issuance of the Notice to Proceed for the undertaking.
  - ii. The BLM will submit the LTMP to the consulting parties for review. The parties will be afforded 30 days following receipt of the LTMP to submit any written comments to BLM. BLM will provide the reviewing parties with written documentation indicating whether and how the draft LTMP will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the BLM within 30 days following receipt, BLM may modify the LTMP as BLM may deem appropriate. Thereafter, BLM may issue the LTMP in final form and distribute the LTMP to the consulting parties.

## **V. POST-REVIEW DISCOVERIES AND UNANTICIPATED EFFECTS**

- a) If the undertaking affects a previously unidentified cultural resource, including human remains and/or associated funerary objects or graves, or affect such properties in a way not previously anticipated, or have greater adverse effect than previously anticipated, all work in the vicinity of the discovery shall cease. The archaeological monitor and/or tribal monitoring consultant shall immediately notify the PA regarding any inadvertent effects or discoveries. The PA shall contact the BLM El Centro Project Manager or designated compliance manager and shall follow the procedures provided in the HPTP prepared pursuant to this agreement and Appendix E.
- i. Amendment of the procedures for discoveries and unanticipated effects outlined in Appendix E will not require amendment of this Agreement.
- b) If human remains and/or associated funerary objects compose all or part of the discovery, then the BLM shall follow the process described in Stipulation VI.
- c) The BLM at its discretion may treat any discovered property to be eligible for inclusion in the NRHP for project management purposes. The BLM's compliance with this stipulation shall satisfy the requirements of 36 C.F.R. 800.13(c).

## **VI. TREATMENT OF HUMAN REMAINS OF NATIVE AMERICAN ORIGIN**

- a) The BLM shall ensure that any Native American burials and related items discovered on BLM administered lands during implementation of the terms of the Agreement will be treated in accordance with the requirements of the NAGPRA. The BLM will consult with concerned Tribes, Tribal Organizations, or individuals in accordance with the requirements of Sections 3(c) and 3(d) of the NAGPRA and implementing regulations found at 43 C.F.R. Part 10 to address the treatment of Native American burials and related cultural items that may be discovered during implementation of the undertaking.
- b) The BLM shall ensure that Native American burials and related cultural items on non-Federal lands are treated in accordance with the applicable requirements of the California Public Resources Code at Sections 5097.98 and 5097.991, and of the California Health and Human Safety Code at Section 7050.5(c).

## **VII. REPORTING**

- a) Within twelve (12) months after BLM has determined that all fieldwork required by Stipulation III has been completed, BLM will ensure preparation, and concurrent distribution to the consulting parties, a written draft technical report that documents the results of implementing the requirements of the HPTP. The reviewing parties will be afforded 30 days following receipt of the draft technical report to submit any written comments to BLM. Failure of these parties to respond within this time frame shall not preclude BLM from authorizing revisions to the draft technical report as BLM may deem appropriate. BLM will provide the reviewing parties with written documentation

indicating whether and how the draft technical report will be modified in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to the BLM within 30 days following receipt, BLM may modify the draft technical report as BLM may deem appropriate. Thereafter, BLM may issue the technical report in final form and distribute this document in accordance with Paragraph “b” of this stipulation.

- b) Copies of the final technical report documenting the results of implementing the requirements of the HPTP will be distributed by BLM to the consulting parties and to the appropriate California Historical Resources Information Survey (CHRIS) Regional Information Center.

## **VIII. ADMINISTRATIVE STANDARDS**

- a) **PROFESSIONAL QUALIFICATION STANDARDS.** All actions prescribed by this Agreement that involve the identification, evaluation, analysis, recordation, treatment, monitoring, and disposition of historic properties and that involve the reporting and documentation of such actions in the form of reports, forms or other records, shall be carried out by or under the direct supervision of a person or persons meeting, at a minimum, the Secretary of the Interior’s Professional Qualifications Standards (PQS), as appropriate (48 Fed. Reg. 44739 dated September 29, 1983). However, nothing in this Stipulation may be interpreted to preclude any party qualified under the terms of this paragraph from using the services of persons who do not meet the PQS, so long as the work of such persons is supervised by someone who meets the PQS. Indian tribes have the sole authority to certify and approve tribal consultants who may perform monitoring activities in support of implementation of this Agreement.
- b) **DOCUMENTATION STANDARDS.** Reporting on and documenting the actions cited in this Agreement shall conform to every reasonable extent with the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation (48 Fed Reg. 44716-40 dated September 29, 1983), as well as, the BLM 8100 Manual, the California Office of Historic Preservation’s Preservation Planning Bulletin Number 4(a) December 1989, Archaeological Resource Management Reports (ARMR): Recommended Contents and Format (ARMR Guidelines) for the Preparation and Review of Archaeological Reports, and any specific and applicable county or local requirements or report formats.
- c) **CURATION STANDARDS.** On BLM-administered land, all records and materials resulting from the actions required by this Agreement shall be curated in accordance with 36 C.F.R. Part 79, and the provisions of the NAGPRA, 43 C.F.R. Part 10, as applicable. To the extent permitted under Sections 5097.98 and 5097.991 of the California Public Resources Code, the materials and records resulting from the actions required by this Agreement for private lands shall be curated in accordance with 36 C.F.R. Part 79. The BLM will seek to have the materials retrieved from private lands donated through a written donation agreement. The BLM will attempt to have all collections curated at one local facility where possible unless otherwise agreed to by the consulting parties.

## **IX. IMPLEMENTATION OF THE UNDERTAKING**

- a) The BLM may authorize construction activities, including but not limited to those listed below, to proceed in specific geographic areas where there are no historic properties; where there will be no adverse effect to historic properties; where a monitoring and discovery process or plan is in place per Stipulation IV or in areas where an HPTP(s) has been approved, initiated and field work completed. Such construction activities may include:
  - i) demarcation, set up, and use of staging areas for construction of the undertaking,
  - ii) conduct of geotechnical boring investigations or other geophysical and engineering activities, and
  - iii) grading, constructing buildings, and installing photovoltaic panels.
  - iv) construction of transmission towers
- b) Initiation of any construction activities on Federal lands shall not occur until after the Signatory parties agree and BLM issues the ROD, ROW grant, and Notice(s) to Proceed. Construction shall not occur in waters of the United States on or off federal lands until the COE issues the DA permit.

## **X. AMENDMENTS TO THE AGREEMENT**

- a) This Agreement may be amended only upon written agreement of the Signatories.
  - i) Upon receipt of a request to amend this Agreement, the BLM will immediately notify the other consulting parties and initiate a 30 day period to consult on the proposed amendment, whereupon all parties shall consult to consider such amendments.
  - ii) If agreement to the amendment cannot be reached within the 30 day period, resolution of the issue may proceed by following the dispute resolution process in Stipulation XI.
- b) This Agreement may be amended when such an amendment is agreed to in writing by all Signatories.
- c) Amendments to this Agreement shall take effect on the dates that they are fully executed by the Signatories.
- d) Modifications, additions, or deletions to the appendices made as a result of continuing consultation among the consulting parties do not require the Agreement to be amended.

## **XI. DISPUTE RESOLUTION**

- a) Should any party to this Agreement object at any time to any actions proposed or the manner in which the terms of this Agreement are implemented, the BLM shall consult



with such party to resolve the objection. If the BLM determines that such objection cannot be resolved, the BLM will:

- i) Forward all documentation relevant to the dispute, including the BLM's proposed resolution, to the ACHP. The ACHP shall provide the BLM with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the BLM shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The BLM will then proceed according to its final decision.
- ii) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the BLM may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the BLM shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- iii) The BLM's responsibility to implement all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

## **XII. TERMINATION**

- a) If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X above. If within sixty (60) days an amendment cannot be reached;
- i) a Signatory or Invited Signatory may terminate their participation in the Agreement upon written notification to the other Signatories and Invited Signatories.
- b) If the Agreement is terminated, and prior to work continuing on the undertaking, the BLM shall continue to follow the process provided at 36 C.F.R. 800.6 until (a) a new Agreement is executed pursuant to 36 C.F.R. 800.6 or (b) the agencies request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. The BLM shall notify all parties to this Agreement as to the course of action it will pursue.

## **XIII. PARTIES TO THE AGREEMENT**

- a) Should conditions of the undertaking change such that other federal agencies, state agencies, Indian tribes, tribal organizations or other organizations or individuals not already party to this Agreement request in writing to participate, the BLM will notify the other consulting parties and consider the request to participate in the Agreement. If the BLM determines that the party should be invited to participate in this Agreement, the BLM shall notify the requesting party in writing and the Agreement shall be amended

following the procedures in Stipulation X.

- b) Should conditions of the undertaking change such that a Signatory or Invited Signatory to this Agreement determine that its participation in the undertaking is no longer required the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Signatory or Invited Signatory to the Agreement where its participation is no longer required for purposes of section 106 does not terminate the Agreement as described in Stipulation XII.
- c) Should a Concurring Party determine that its participation in the undertaking and this Agreement is no longer warranted, the party may withdraw from participation by informing the BLM. The BLM shall inform the other parties to this Agreement of the withdrawal. Withdrawal of a Concurring Party to the Agreement does not require an amendment of the Agreement.

#### **XIV. DURATION OF THIS AGREEMENT**

- a) This Agreement will expire if the undertaking has not been initiated and the BLM ROW grant expires or is withdrawn, or the stipulations of this Agreement have not been initiated, within five (5) years from the date of its execution. Prior to such time, the BLM may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation X below. Prior to work continuing on the undertaking, the BLM shall continue to follow the process provided at 36 C.F.R. 800.6 until either (a) a new memorandum of agreement or programmatic agreement is executed pursuant to 36 C.F.R. 800.6, or (b) the BLM request, take into account, and respond to the comments of the ACHP under 36 C.F.R. 800.7. The BLM shall notify the parties to the Agreement as to the course of action they will pursue.
- b) Unless the Agreement is terminated pursuant to Stipulation XII, another agreement executed for the undertaking supersedes it, or the undertaking itself has been terminated, this Agreement will remain in full force and effect until BLM, in consultation with the other Signatories, determines that implementation of all aspects of the undertaking has been completed and that all terms of this have been fulfilled in a satisfactory manner. Upon a determination by BLM that implementation of all aspects of the undertaking have been completed and that all terms of this Agreement have been fulfilled in a satisfactory manner, BLM will notify the parties to this Agreement in writing of the agency's determination. This Agreement will terminate and have no further force or effect 30 days after BLM so notifies the Signatories to this Agreement, unless BLM retracts its determination before the end of that period.

#### **XV. EFFECTIVE DATE**

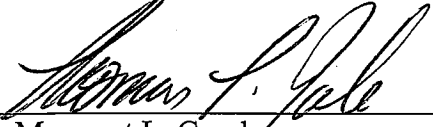
- a) This Agreement and any amendments shall take effect on the date that it has been fully executed by the Signatories.
- b) Execution and implementation of this Agreement is evidence that the BLM, COE and

DOE have taken into account the effect of this undertaking on historic properties, afforded the ACHP a reasonable opportunity to comment, and that the BLM, COE and DOE have satisfied their responsibilities under Section 106. The BLM shall be responsible for managing historic properties within the APE for this undertaking pursuant to the NHPA. The Signatories and Invited Signatories to this Agreement represent that they have the authority to sign for and bind the entities on behalf of whom they sign.

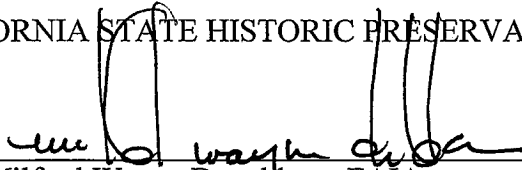
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**SIGNATORY PARTIES**

U.S. BUREAU OF LAND MANAGEMENT

BY:  DATE: 7/6/2011  
for Margaret L. Goodro  
Manager, El Centro Field Office

CALIFORNIA STATE HISTORIC PRESERVATION OFFICER

BY:  DATE: 8 JUL 2011  
Milford Wayne Donaldson, FAIA  
State Historic Preservation Officer

## **INVITED SIGNATORY PARTIES**

United States Army Corps of Engineers, Los Angeles District  
United States Department of Energy, Loans Program Office  
CSOLAR Development, L.L.C.

**Invited Signatory**

U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
David J. Castanon  
Chief, Regulatory Division



**Invited Signatory**

U.S. DEPARTMENT OF ENERGY, LOAN PROGRAMS OFFICE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Matthew C. McMillen  
Director, Environmental Compliance

**Invited Signatory**

CSOLAR Development, L.L.C.

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

## **CONCURRING PARTIES**

BARONA BAND OF DIEGUENO INDIANS  
CAMPO BAND OF MISSION INDIANS  
COCOPAH INDIAN TRIBE  
FORT YUMA QUECHAN INDIAN TRIBE  
EWIIAAPAYP BAND OF KUMEYAAY INDIANS  
JAMUL INDIAN VILLAGE  
KWAAYMII LAGUNA BAND OF INDIANS  
LA POSTA BAND OF KUMEYAAY INDIANS  
MANZANITA BAND OF KUMEYAAY INDIANS  
MESA GRANDE BAND OF MISSION INDIANS  
SAN PASQUAL BAND OF DIEGUENO INDIANS  
SANTA YSABEL BAND OF DIEGUENO INDIANS  
SYCUAN BAND OF KUMEYAAY NATION  
TORRES-MARTINEZ DESERT CAHUILLA INDIANS  
VIEJAS BAND OF KUMEYAAY INDIANS  
IMPERIAL COUNTY, CALIFORNIA

BARONA BAND OF DIEGUENO INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

CAMPO BAND OF MISSION INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

COCOPAH INDIAN TRIBE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_



**Concurring Party**

FORT YUMA QUECHAN INDIAN TRIBE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

EWIIAAPAAYP BAND OF KUMEYAAAY INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

JAMUL INDIAN VILLAGE

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

KWAAYMII LAGUNA BAND OF INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

LA POSTA BAND OF KUMEYAAY INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

MANZANITA BAND OF KUMEYAAY INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_



MESA GRANDE BAND OF MISSION INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

SAN PASQUAL BAND OF DIEGUENO INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

SANTA YSABEL BAND OF DIEGUENO INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

SYCUAN BAND OF KUMEYAAY NATION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

TORRES-MARTINEZ DESERT CAHUILLA INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

VIEJAS BAND OF KUMEYAA Y INDIANS

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Concurring Party**

IMPERIAL COUNTY, CALIFORNIA

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

TITLE: \_\_\_\_\_



## APPENDIX A - DEFINITIONS

- a) ***Area of Potential Effect.*** The APE is defined as the total geographic area or areas within which the undertaking may directly or indirectly cause alterations in the character or use of historic properties per 36 C.F.R. 800.16(d). The APE is influenced by the scale and nature of an undertaking and includes those areas which could be affected by an undertaking prior to, during and after construction.
- b) ***Concurring Parties.*** Collectively refers to consulting parties with a demonstrated interest in the undertaking, who agree, through their signature, with the terms of this Agreement. Concurring Parties may propose amendments to this Agreement.
- c) ***Cultural Resource.*** A cultural resource is an object or definite location of human activity, occupation, use, or significance identifiable through field inventory, historical documentation, or oral evidence. Cultural resources are prehistoric, historic, archaeological, or architectural sites, structures, buildings, places, or objects and locations of traditional cultural or religious importance to specified social and/or culture groups. Cultural resources include the entire spectrum of objects and places, from artifacts to cultural landscapes, without regard to eligibility for inclusion on the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR).
- d) ***Consulting Parties.*** Collectively refers to the Signatories, Invited Signatories and Concurring Parties who have signed this Agreement.
- e) ***Historic Properties.*** Properties (cultural resources) that are included in, or eligible for inclusion in, the NRHP maintained by the Secretary of the Interior and per the NRHP eligibility criteria at 36 C.F.R.60.4 and may include any prehistoric or historic district, site, building, structure, traditional cultural property or object. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization that meet the NRHP criteria. The term “eligible for inclusion on the NRHP” refers both to properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the NRHP criteria.
- f) ***Historical Resources.*** Historical resources are cultural resources that meet the criteria for listing on the CRHR as provided at California Code of Regulations Title 14, Chapter 11.5, Section 4850 and may include, but are not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.
- g) ***Invited Signatories.*** Invited Signatories are parties that have specific responsibilities as defined in this Agreement. Those Invited Signatories who actually sign this Agreement have the same rights with regard to seeking amendment or termination of this Agreement as the Signatory Parties, but whose signatures are not required for execution of the Agreement. The Invited Signatory to this Agreement is the Applicant.
- h) ***Lands Administered by the U.S. Department of Interior, Bureau of Land Management (BLM)*** means any federal lands under the administrative authority of the BLM.

- i) ***Lands Regulated by the U.S. Army Corps of Engineers*** (COE) means any lands subject to regulation by the COE pursuant to Section 404 of the Clean Water Act (33 USC Part 1344) or other law, and for which the COE has issued a Department of the Army permit.
- j) ***Literature Review***. A literature review is one component of a BLM class I inventory, as defined in BLM Manual Guidance 8100.21(A)(1), and is a professionally prepared study that includes a compilation and analysis of all reasonably available cultural resource data and literature, and a management-focused, interpretive, narrative overview, and synthesis of the data. The overview may also define regional research questions and treatment options.
- k) ***Records Search***. A records search is one component of a BLM class I inventory and an important element of a literature review. A records search is the process of obtaining existing cultural resource data from published and unpublished documents, BLM cultural resource inventory records, institutional site files, State and national registers, interviews, and other information sources.
- l) ***Signatories***. Signatories are parties that have the sole authority to execute, amend or terminate this Agreement. Signatories to this Agreement are the BLM, COE, DOE, and SHPO.
- m) ***Traditional Cultural Property***. A traditional cultural property is defined generally as a property that is important to a living group or community because of its association with cultural practices or beliefs that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. It is a place, such as a traditional gathering area, prayer site, or sacred/ceremonial location that may figure in important community traditions. These places may or may not contain features, artifacts, or physical evidence, and are usually identified through consultation. A traditional cultural property may be eligible for inclusion in the NRHP and the CRHR.
- n) ***Tribes***. The federally recognized Indian tribes that the BLM is consulting with on this undertaking.
- o) ***Tribal Organization***. A non-Federally recognized Indian tribe or Native American organization that the BLM is consulting with on this undertaking.
- p) ***Windshield Survey***. A windshield survey is the driving or walking of surveyors along streets and roads of a community in order to observe and record the buildings, structures, and landscape characteristics seen from those vantage points. A windshield survey is a method commonly utilized in reconnaissance surveys to identify built-environment resources, such as buildings, objects, and structures.

## **APPENDIX B – AREA OF POTENTIAL EFFECT**

- a) The BLM has defined the APE for the CSOLAR Imperial Solar Energy Center South Project based on consideration of both direct and indirect impacts. Below is a discussion about the APE and the methodology used to so define, and the survey methodology utilized within each APE.
  - i) The area within which historic properties could sustain direct effects as a result of the undertaking is defined to include:
    - (1) The block area of installation of the proposed solar energy generating facility, which includes approximately 928 acres of private and formally developed agricultural lands, and generally includes; the west half of Section 21, Township 17 South and Range 12 East north of the international border, and; all of Section 20, Township 17 South, Range 12 East north of the international border, and; the southeast quarter of Section 17, Township 17 South, Range 12 East (all San Bernardino Base Meridian).
    - (2) All linear elements of the undertaking including:
      - (a) A ROW for the IVS-3 230 kV transmission line is approximately 125-feet wide and 1 mile long and extends from the solar electric generating plant to the intersection of the IVS-1 transmission line. The survey corridor for cultural resources for this linear element was established as a 250-foot wide buffer on either side of the center line (500-foot wide corridor) to allow for changes in the ROW to avoid cultural resources.
      - (b) A ROW for access and use of the existing 230 kV transmission line corridor and construction of the IVS-1 230 kV transmission line. The ROW is approximately 125-feet wide and 5 miles long and extends from the intersection of the IVS-3 transmission line to the Imperial Valley Substation. The survey corridor for cultural resources for this linear element was established as a 150-foot wide buffer on either side of the center line (300-foot wide corridor) to allow for changes in the ROW to avoid cultural resources.
  - ii) The area within which historic properties could sustain indirect effects, including visual, auditory, atmospheric, and contextual, as a result of the undertaking includes:
    - (1) Historic properties within a 1-mile radius of the direct effects APE that are identified through a review of existing literature and records search, information or records on file with the BLM or at the South Coastal Information Center, interviews or discussions with local professional or historical societies and local experts in history or archaeology.

- (a) Historic properties identified through archaeological or other field investigations for this undertaking that, as a result of project redesign to avoid direct effects to cultural resources, are no longer within the APE.
- (2) Historic properties included in the Native American Heritage Commission Sacred Lands Files, identified through a literature review or records search, or identified by a Tribe or Tribal Organization, through consultation as having religious or cultural significance that may be affected by the undertaking.
- (3) Historic properties that have been identified by a consulting party, organization, governmental entity, or individual through consultation or the public commenting processes as having significance or being a resource of concern that may be affected by the undertaking.
- (4) Built-environment resources located within one-half mile of the project footprint whose historic settings could be adversely affected.
  - (a) On private property, historic properties within one-half mile of the direct effects APE that are identified through surveys, where access was granted, and windshield surveys, where access was not granted.

## **APPENDIX C: HISTORIC PROPERTIES TREATMENT PLAN**

COVER PAGE FROM DRAFT RESEARCH DESIGN.

FINAL DOCUMENT WILL BE INCLUDED AFTER CONSULTATION AND WHEN APPROVED.

# **RESEARCH DESIGN FOR ARCHAEOLOGICAL DATA RECOVERY AT PREHISTORIC SITE CA-IMP-3999, IMPERIAL COUNTY, CALIFORNIA**

*Prepared for:*

LightSource Renewables, LLC  
9151 Rehco Road  
San Diego, California 92121

*and*

USDI Bureau of Land Management  
El Centro Field Office

*Prepared by:*

ASM Affiliates, Inc.  
2034 Corte Del Nogal  
Carlsbad, California 92011

Don Laylander and Jerry Schaefer

January 2011  
PN 17450

USGS 7.5' Quadrangle: Mount Signal  
Acreage: 15

Keywords: Data Recovery Plan; IMP-3999; Prehistoric Site; Salton Basin, Imperial Valley, Yuha Desert, West Mesa, Lake Cahuilla; Ceramics, Lithics, Fire-Affected Rock; Surface Collection, Magnetometry, Excavation, Trenching, Geomorphology, Radiocarbon, Thermoluminescence, Obsidian Hydration, X-ray Fluorescence, Protein Residue Analysis

**APPENDIX D: CULTURAL RESOURCES WITHIN THE APE AND PROPOSED  
TREATMENT/MANAGEMENT STRATEGY**



**Table 1: Cultural Resources within the APE and Proposed Treatment/Management Strategy**

Temporary # or Trinomial	Distance from Site Boundary to Nearest Disturbance		Brief Description	Effects	Management Strategy
	Feet	Meters			
IMP-3999	0	0	Temporary camp	Adversely affected	Adversely affected, implement treatment plan, research design, Monitoring
IMP-4485/4495	44	13	Temporary camp	Not affected, towers moved	ESA <sup>1</sup> , Monitoring and Protective Measures
IMP-4959	96	29	Ceramic and lithic scatter	Not affected, road moved	Avoided <sup>2</sup>
IMP-4961	70	21	Ceramic and lithic scatter	Not affected	ESA, Monitoring and Protective Measures
IMP-4962	98	30	Temporary camp	Not affected	Avoided
IMP-4963	39	12	Ceramic and lithic scatter	Not affected	ESA, Monitoring and Protective Measures
IMP-5593	62	19	Lithic scatter	Not affected	ESA, Monitoring and Protective Measures
IMP-7874	309	94	Ceramic and lithic scatter	Not affected	Avoided
IMP-7875	33	10	Lithic scatter	Not affected, access road moved	ESA, Monitoring and Protective Measures
IMP-115-S-2	301	92	Ceramic and lithic scatter	Not affected	Avoided
IMP-115-S-3	407	124	Lithic scatter	Not affected	Avoided
IMP-115-S-4	254	78	Lithic scatter	Not affected	Avoided
IMP-115-S-5	173	53	Lithic scatter	Not affected	Avoided
IMP-115-S-6	72	22	Lithic scatter	Not affected	Avoided
IMP-115-S-7	64	19	Lithic scatter	Not affected, tower moved	ESA, Monitoring and Protective Measures
IMP-115-S-8	33	10	Ceramic and lithic scatter	Not affected, access road and tower moved	ESA, Monitoring and Protective Measures
S-1	331	101	Ceramic and lithic scatter	Not affected	Avoided
S-38	41	13	Ceramic and lithic scatter	Not affected	ESA, Monitoring and Protective Measures
S-5	34	10	Ceramic and lithic scatter	Not affected	ESA, Monitoring and Protective Measures
Signal Mountain	1 mile		Traditional cultural significance	Not affected	Avoided
Westside Main Canal	Within .5 miles		Hydraulic irrigation canal	Not affected	Avoided
All American Canal	Within .5 miles		Hydraulic irrigation canal	Not affected	Avoided
1249 Anza Road	Within .5 miles		Residential building	Not affected	Avoided

<sup>1</sup> Environmentally Sensitive Areas are determined by buffering the known site boundaries by 20 feet, and if the boundary falls within 50 feet of proposed disturbance, monitoring and protective measures would be required.

<sup>2</sup> Site will not be affected and will be avoided. Monitoring or protection measures (temporary fencing, water runoff diversion) would be imposed by the Monitors, the Principle Archaeologist, or the BLM, should project conditions warrant.

## **APPENDIX E: PROCEDURES FOR POST-REVIEW DISCOVERIES OR UNANTICIPATED EFFECTS**

As provided in Stipulation V to this Agreement, if construction has commenced and the undertaking affects a previously unidentified cultural resource or affect such properties in a way not previously anticipated, or have greater adverse effect than previously anticipated, all work in the vicinity of the discovery shall cease.

- a) The archaeological and tribal monitor will carefully inspect the ground surface around the discovery and the displaced dirt in order to determine whether the discovery is an isolated find (fewer than three items) or a site (three or more items, or a feature). If the find is determined to be an isolated find (with the exception of human remains), the discovery will be documented, reported and described in the monitoring report. Isolated finds will only be collected if they are diagnostic artifacts.
- b) If the discovery is determined to be a site, after securing the work area from additional disturbance, in concert with the Construction Foreman or Field Supervisor, the archaeological and/or tribal monitor will notify the PA, who will notify the BLM archaeologist by telephone of the nature and extent of the discovery.
- c) No further action will be taken until the BLM has determined the nature of the discovery and the affect. An area will be delineated not to exceed 150 feet from the approximate center point of the discovery (or a smaller or larger area if warranted by specific circumstances) in which no further work is to take place until management of the discovery is resolved. The BLM will implement protection measures, including stabilization or covering, to protect any discovery from further disturbance until management of the discovery is resolved. Ongoing work outside the 150 foot buffer (or a smaller area if determined appropriate by parties in the field) of the discovery may continue.
- d) The BLM will notify the consulting parties and Indian tribes of the discovery by email and/or telephone within 48 hours of learning of the discovery.
  - i. If at any time subsequent to learning of the discovery, the BLM, in consultation with those consulting parties and Indian tribes that request to participate in the management of the discovered site, and the Applicant can agree to the manner in which the discovery will be managed and actions that will be taken to avoid, minimize, or mitigate adverse effects, the BLM will document such agreement and notify and provide the documentation to SHPO. The BLM will implement the actions to manage the discovery as prescribed.
  - ii. If management of the discovery cannot be resolved by the BLM, those consulting parties and Indian tribes that request to participate in the management of the discovered site, and the Applicant, then management of the discovery shall continue to follow the process as provided in Appendix E(e-g).

- e) Within 120 hours of learning of the discovery, and in consultation with the PA and any consulting party or Indian tribe that so requests, the BLM archaeologist will determine what additional fieldwork is necessary, such as limited test excavation, to determine the site's potential eligibility for the NRHP, and it will be implemented.
  - i. In general any testing or evaluation effort will be focused on the area of discovery within the area of direct impact including a reasonable buffer (not more than 30 feet from the maximum extent of the find). The focus will be to determine the nature of the archaeological resource and to assess the quantity, quality, and variety of preserved archaeological items that are or may be present.
  - ii. To the degree possible the construction and engineering teams will be included in discussions to avoid or minimize potential damage to the discovered resource.
  - iii. A tribal monitoring consultant will be present during testing and evaluation field work, as well as during any subsequent ground-disturbing work at the discovery location.
- f) At the conclusion of site testing and evaluation, if required, the PA will have three calendar days in which to submit a summary letter report assessing the site's eligibility and recommending appropriate treatment measures, such as the need for archaeological data recovery, if the site is recommended eligible. If testing is not required, the PA will submit the summary letter report within 120 hours of learning of the discovery. The letter report will be submitted to the BLM archaeologist for review and approval. Upon receiving approval from the BLM, the PA will provide copies to those consulting parties and Indian tribes who requested to participate in resolution of effects for the post-review discovery.
- g) Determinations concerning NRHP eligibility and the implementation of proposed treatment measures for the discovered site will be made by the BLM and submitted concurrently to the SHPO and to those consulting parties and Indian tribes who requested to participate in resolution of effects for a ten day review period.
  - i. The consulting parties and Indian tribes who requested to participate in resolution of effects may submit any comments regarding the BLM's determinations or the proposed treatment measures to the BLM or directly to the SHPO during this review period. The BLM will immediately forward any comments submitted by any party regarding its determinations or the proposed treatment measures to SHPO during this review period.
  - ii. If the BLM determines that the discovered resource does not qualify for listing on the NRHP, and the SHPO agrees, the BLM may authorize construction to continue.
  - iii. At the conclusion of the review period, the BLM will take into account any recommendations from SHPO, and the consulting parties and Indian tribes who requested to participate in resolution of effects, regarding the determinations of eligibility and proposed treatment measures, and may authorize the PA to carry out the proposed treatment measures.

- h) Upon completion of the proposed treatment, the PA will prepare a brief interim letter report summarizing the results and submit to the BLM for review and approval. Upon approval, the BLM will provide copies to the SHPO and to those consulting parties and Indian tribes who requested to participate in resolution of effects for the post-review discovery.
- i) A final data recovery report will be prepared after laboratory studies and analyses and submitted to the BLM for review and approval. The BLM will provide a copy of the final monitoring report to any consulting party or Indian tribe who so requests.